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STATUTES

OF THE

TERRITORY OF WASHINGTON:

BEING THE CODE PASSED BY THE

LEGISLATIVE ASSEMBLY,

AT THEIR FIRST SESSION BEGUN AND HELD AT
OLYMPIA, FEBRUARY 27TH, 1854.

ALSO, CONTAINING

THE DECLARATION OF INDEPENDENCE, THE CONTITUTION OF
THE UNITED STATES, THE ORGANIC ACT OF WASHINGTON TERRITORY, THE DONATION LAWS, &C., &C.

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DECLARATION OF INDEPENDENCE.

JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should be not
changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute

despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world :—

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained ; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortble, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected ; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise—the state remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states—for that purpose obstructing the laws of naturalization of foreigners, refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in time of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws—giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesc ine the necessity which denounces our separation, and hold them, as we hold the rest of mankind: enemies in war; in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare that these united colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members:

JOHN ADAMS,
SAMUEL ADAMS,
JOSIAH BARTLETT,
CARTER BRAXTON,
CHARLES CARROLL, of Carrolton,
SAMUEL CHASE,
ABRAHAM CLARK,
GEORGE CLYMER,
WILLIAM ELLERY,
WILLIAM FLOYD,
BENJAMIN FRANKLIN,
ELBRIDGE GERRY,
BUTTON GWINNET,
LYMAN HALL,
JOHN HANCOCK,
BENJAMIN HARRISON,
JOHN HART,
THOMAS HEYWARD, JR.,
JOSEPH HEWES,
WILLIAM HOOPER,
STEPHEN HOPKINS,
THOMAS LYNCH, JR.,
THOMAS M'KEAN,
ARTHUR MIDDLETON,
LEWIS MORRIS,
ROBERT MORRIS,
JOHN MORTON,
THOMAS NELSON, JR.,
WILLIAM PACA,
ROBERT TREAT PAINE,
JOHN PENN,
GEORGE READ,
CÆSAR RODNEY,
GEORGE ROSS,
BENJAMIN RUSH, M. D.,
EDWARD RUTLEDGE,
ROGER SHERMAN,
JAMES SMITH,
RICHARD STOCKTON,
THOMAS STONE,
GEORGE TAYLOR,
MATHEW THORNTON,

FRANCIS HOPKINS,
SAMUEL HUNTINGTON,
THOMAS JEFFERSON,
FRANCIS LIGHTFOOT LEE,
RICHARD HENRY LEE,
FRANCIS LEWIS,
PHILIP LIVINGSTON,
GEORGE WALTON,
WILLIAM WHIPPLE,
WILLIAM WILLIAMS,
JAMES WILSON,
JOHN WITHERSPOON,
OLIVER WOLCOTT,
GEORGE WYTHE.

CONSTITUTION

OF THE

UNITED STATES.

PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

Sec. 1. Legislative powers.
2. House of representatives; its members; by whom chosen.
Qualifications of representatives.
Representatives and taxes to be apportioned according to numbers.
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Adjournment.

Sec. 6.	Senators and representatives to be paid; privileges.
	Disability to hold offices.
Sec. 7.	Revenue bills.
	The forms of proceeding on bills.
	Ib. on joint resolutions except for adjournment.
Sec. 8.	Congress have power to lay taxes, &c.
Sec. 9.	Importation of certain persons not to be prohibited until after 1808.
	Writ of habeas corpus; direct taxes.
	No export duty; nor preference of one state to another.
	Money to be expended by legal appropriation only.
	Titles of nobility, &c.
Sec. 10.	Powers forbidden to the states individually.
	Powers which the states can exercise only under sanction of congress.

OF THE LEGISLATIVE POWER.

Section 1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

OF THE HOUSE OF REPRESENTATIVES.

Section 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant in that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

OF THE SENATE.

SECTION 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and have a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

The senate shall have sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

MANNER OF ELECTING MEMBERS.

SECTION 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

CONGRESS TO ASSEMBLE ANNUALLY.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

POWERS.

SECTION 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceeding, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members, of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

COMPENSATION, ETC., OF MEMBERS.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

MANNER OF PASSING BILLS, ETC.

SECTION 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

POWER OF CONGRESS.

SECTION 8. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the Unitied States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

LIMITATIONS OF THE POWERS OF CONGRESS.

SECTION 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed

No capitation, or direct tax, shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

LIMITATION OF THE POWERS OF THE INDIVIDUAL STATES.

SECTION. 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainer, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports, or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of congress. No state shall, without the consent of congress, lay any duty of tonage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SEC. 1. Executive power vested in a president.
Electors of president and vice president.
Meeting of electors of president, &c.
Time of choosing electors.
Qualifications of the president.
In case of vacancy in the office of president, the vice president to act.
SEC. 2. Powers of the president.
SEC. 3. Other duties and powers.
SEC. 4. Officers liable to impeachment.

EXECUTIVE POWER.

SECTION 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected, as follows:

MANNER OF ELECTING.

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members, from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.]

TIME OF CHOOSING ELECTORS.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

WHO ELIGIBLE.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

WHEN THE PRESIDENT'S POWER DEVOLVES ON THE VICE PRESIDENT.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

PRESIDENT'S COMPENSATION.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

OATH.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect, and defend the constitution of the United States.

POWERS AND DUTIES.

Section 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

OFFICERS REMOVED.

SECTION 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SEC. 1. Judicial power.
Judges to hold their offices during good behavior, &c.
SEC. 2. Extent of the judicial power.
Original and appellate jurisdiction of the supreme court.
Trial of crimes to be by jury, &c.
SEC. 3. Definition of treason.
Congress to declare its punishment.

OF THE JUDICIARY.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

JURISDICTION OF SUPREME COURT.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

OF TRIALS FOR CRIMES.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

OF TREASON.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SEC. 1. Credit in one state to the public acts, &c., of another.
SEC. 2. Reciprocity of citizens.
  Criminals flying from one state to another, to be delivered up on demand.
  Runaways to be delivered up.
SEC. 3. New states may be admitted into the union, &c.
  Congress to have power over territory, &c.
SEC. 4. Republican form of government guaranteed to each state, &c.

STATE ACTS.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

PRIVILEGES OF CITIZENS.

SECTION 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

RUNAWAYS TO BE DELIVERED UP.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

NEW STATES.

SECTION 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

TERRITORIAL AND OTHER PROPERTY.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

Mode of amending this constitution.

AMENDMENTS.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

DEBTS.

Assumption of former debts.
This constitution, &c., the supreme law: the state judges bound thereby.
Certain officers to take oath to support constitution.
No religious test.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

SUPREME LAW OF THE LAND.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

OATH.—NO RELIGIOUS TEST.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

Ratification.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same:

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE.
JOHN LANGDON,
NICHOLAS GILMAN.
MASSACHUSETTS.
NATHANIEL GORHAM,
RUFUS KING.
CONNECTICUT.
WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN.
NEW YORK.
ALEXANDER HAMILTON.
NEW JERSEY.
WILLIAM LIVINGSTON,
DAVID BREARLEY,
WILLIAM PATTERSON,
JONATHAN DAYTON.
PENNSYLVANIA.
BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS.
Attest,

DELAWARE.
GEORGE READ,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.
MARYLAND.
JAMES M'HENRY,
DANIEL OF ST. THOMAS JENIFER,
DANIEL CARROLL.
VIRGINIA.
JOHN BLAIR,
JAMES MADISON, JR.
NORTH CAROLINA.
WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.
JOHN RUTLEDGE,
SOUTH CAROLINA.
CHARLES COTESWORTH PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.
GEORGIA.
WILLIAM FEW,
ABRAHAM BALDWIN.
WILLIAM JACKSON, *Secretary.*

AMENDMENTS

TO THE CONSTITUTION OF THE UNITED STATES, RATIFIED ACCORDING TO THE PROVISIONS OF THE FIFTH ARTICLE OF THE FOREGOING CONSTITUTION.

ART. 1. Restrictions on the power of congress.
2. Right of the people to keep arms, &c.
3. Quartering of soldiers, &c.
4. Search warrants.
5. Proceedings against persons charged with crimes. Their rights,
6. Further rights.
7. Right of trial by jury.
8. Excessive bail, &c.
9. Construction of constitution.
10. Powers reserved to the states.
11. Restriction of judicial powers.
12. Mode of electing the president and vice president of the United States.

FREE EXERCISE OF RELIGION.

ARTICLE THE FIRST. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

RIGHT TO BEAR ARMS.

ARTICLE THE SECOND. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

NO SOLDIER TO BE BILLETED, ETC.

ARTICLE THE THIRD. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

UNREASONABLE SEARCHES PROHIBITED.

ARTICLE THE FOURTH. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

CRIMINAL PROCEEDINGS.

ARTICLE THE FIFTH. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury; except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

MODE OF TRIAL.

ARTICLE THE SIXTH. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

RIGHT OF TRIAL BY JURY.

ARTICLE THE SEVENTH. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

BAIL FINES.

ARTICLE THE EIGHTH. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

RIGHTS NOT ENUMERATED.

ARTICLE THE NINTH. The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

POWERS RESERVED.

Article the tenth. The powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

[The following amendment was proposed at the second session of the third congress. It is printed in the Laws of the United States, 1st vol., p. 73, as Article 11.]

LIMITATION OF JUDICIAL POWER.

Article the eleventh. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[The three following sections were proposed as amendments at the first session of the eighth congress. They are printed in the Laws of the United States as Article 12.]

ELECTION OF PRESIDENT.

Article the twelfth. The electors shall meet in their respective states and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of senate shall, in the presence of the senate and house of representatives, open all certificates, and the votes shall then be counted;—the person having the greatest number of votes for president, shall be the president, if such a number be a majority of the whole number of electors appointed; and if no person have such a majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of

March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

NOTE.—Another amendment was proposed as Article xiii., at the second session of the eleventh congress, but, not having been ratified by a sufficient number of states, has not yet become valid as a part of the constitution of the United States. It is erroneously given as a part of the constitution, in page 74, vol. 1, Laws of the United States.

TREATY WITH GREAT BRITAIN,

OF LIMITS WESTWARD OF THE ROCKY MOUNTAINS.

Concluded June 15th, 1846.

PREAMBLE.

Proclamation by the President of the United States, August 5th, 1846.

Whereas, a treaty between the United States of America and her majesty, the queen of the United Kingdom of Great Britain and Ireland, was concluded and signed by their plenipotentiaries at Washington, on the fifteenth day of June last, which treaty is word for word, as follows :—

The United States of America and her majesty, the queen of the United Kingdom of Great Britain and Ireland, deeming it to be desirable for the future welfare of both countries, that the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the territory on the north-west coast of America, lying westward of the Rocky or Stony mountains, should be finally terminated by an amicable compromise of the right mutually asserted by the two parties, over the said territory, have respectively named plenipotentiaries to treat and agree concerning the terms of such settlement; that is to say: The president of the United States of America has, on his part, furnished with full powers James Buchannan, secretary of state of the United State, and her majesty, the queen of the United Kingdom of Great Britain and Ireland, has, on her part, appointed the Right Honorable Richard Pakenham, a member of her majesty's most honorable privy council, and her majesty's envoy extraordinary and minister plenipotentiary to the United States; who, after having communicated unto each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles :—

ART. 1. Boundary line between the U. S. and British possessions west of Rocky mountains; navigation of the channel between Vancouver's Island and the continent, and of Fuca's straits, to be free to both parties.
2. Navigation of Columbia river to be free and open to Hudson's Bay Co. and British subjects trading with them; not to be construed to prevent the U. S. from making regulation for navigation of said river.
3. Possessory rights of the Hudson's Bay Co. and all British subjects to be respected.
4. Farms, &c. belonging to Puget Sound Agricultural Co. to be confirmed to them: but may, under certain cirumstances, be transferred to the U. S. at a proper valuation.
5. Treaty to be ratified, and ratifications to be exchanged, within six months.
Recital of the ratification; ratifiers.
Proclamation.
Attestation by the president of the U. S.

ARTICLE I.

From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States, and those of her Britanic majesty, shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the Continent from Vancouver's Island, and thence southerly, through the middle of the said channel, and of Fuca's straits to the Pacific ocean: *Provided, however,* that the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties.

ARTICLE II.

From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia river, the navigation of the said branch shall be free and open to the Hudson's Bay company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described shall, in like manner, be free and open. In navigating the said river or rivers, British subjects, with their goods and produce, shall be treated on the same footing as citizens of the United States; it being, however, always understood, that nothing in this article shall be construed as preventing, or intended to prevent, the government of the United States from making any regulations respecting the navigation of the said river or rivers, not inconsistent with the present treaty.

ARTICLE III.

In the future appropriation of the territory south of the forty-ninth parallel of north latitude, as provided in the first article of this treaty, the possessory rights of the Hudson's Bay company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected.

ARTICLE IV.

The farms, lands, and other property of every description belonging to the Puget Sound Agricultural company, on the north side of the Columbia river, shall be confirmed to the said company. In case, however, the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States government should signify a desire to obtain possession of the whole, or any part thereof, the property so required shall be transferred to the said government, at a proper valuation, to be agreed upon between the parties.

ARTICLE V.

The present treaty shall be ratified by the president of the United, States by and with the advice and consent of the senate thereof, and by Her Britanic Majesty; and the ratifications shall be exchanged at London, at the expiration of six months from the date hereof, or sooner, if possible.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Washington, the fifteenth day of June, in the year of our Lord, one thousand eight hundred and forty-six.

JAMES BUCHANAN, [L. S.]
RICHARD PAKENHAM, [L. S.]

And whereas, the said treaty has been duly ratified on both parts, and the respective ratifications of the same were exchanged at London, on the seventeenth ultimo, by Louis McLane, Envoy Extraordinary and Minister Plenipotentiary of the United States, and Viscount Palmerston, Her Britanic Majesty's principal secretary of state for foreign affairs, on the part of their respective governments:

Now, therefore, be it known, that I, JAMES K. POLK, president of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this fifth day of August, in the year of our Lord, one thousand eight hundred and forty-six, and of the Independence of the United States, the seventy-first.

JAMES K. POLK.

By the President:

JAMES BUCHANAN, *Secretary of State.*

ORGANIC ACT.

AN ACT

TO ESTABLISH THE TERRITORIAL GOVERNMENT OF WASHINGTON,

March 2d, 1853.

SEC. 1.	Boundary of Washington territory defined.
	Authority to govern Indians retained.
	Missionary lands confirmed.
SEC. 2.	Executive authority.
	Powers and duties of the governor.
SEC. 3.	Secretary to be appointed.
	His tenure of office and duties.
	To perform the duties of governor in his absence, &c.
SEC. 4.	The legislature.
	Council.
	Representatives.
	The whole not to exceed thirty.
	Apportionment to be made.
	Election, how held, &c.
	When a new election to be ordered.
	Session not to exceed sixty days.
SEC. 5.	Qualification of voters.
	Proviso as to right of suffrage.
	Proviso as to soldiers, seamen, &c.
	Proviso prohibiting persons in the army and navy holding office.
SEC. 6.	Extent of legislative authority.
	No banks to be incorporated or debts contracted.

Taxes to be uniform.
Laws to embrace but one object; that to be expressed in the title.
Secs. 7 & 8. The legislature to provide the manner of electing all inferior officers.
Sec. 9. Of the judiciary.
Judicial districts.
Courts.
Clerks; clerk's fees, &c.
Sec. 10. An attorney and marshal to be appointed.
Their duties and fees to be the same as those of the marshal and attorney of Oregon.
Sec. 11. Appointment of officers.
Their salaries.
Officers of the legislative assembly; their pay.
The legislature to hold but one session annually.
Legislature no power to control disbursements for the territory.
Sec. 12. Existing laws continued in force as far as applicable.
Sec. 13. When, where, and how the first session of the legislative assembly to be held.
Seat of government to be located.
Appropriation for public buildings.
Sec. 14. Delegate, the election and pay of.
Sec. 15. Removal of cases from the courts of Oregon territory.
Proviso.
Sec. 16. Certain officers to retain their offices until others are appointed.
Sec. 17. Of the library.
Sec. 18. Courts and judicial districts.
Sec. 19. Certain officers to give bond.
Sec. 20. Reservation of sections 16 and 36 for schools.
Sec. 21. Concurrent jurisdiction of the courts in Oregon and Washington territories.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the passage of this act, all that portion of Oregon territory lying and being south of the forty-ninth degree of north latitude, and north of the middle of the main channel of the Columbia river, from its mouth to where the forty-sixth degree of north latitude crosses said river, near fort Walla-Walla, thence with said forty-sixth degree of latitude to the summit of the Rocky mountains, be organized into and constitute a temporary government, by the name of the territory of Washington: *Provided,* That nothing in this act contained shall be construed to affect the authority of the government of the United States to make any regulation respecting the Indians of said territory, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never been passed: *Provided, further,* That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said territory, or that may have been so occupied as missionary stations prior to the passage of the act establishing the territorial government of Oregon, together with the improvements thereon, be, and is hereby, confirmed and established to the several religious societies to which said missionary stations respectively belong.

SEC. 2. *And be it further enacted*, That the executive power and authority in and over said territory of Washington shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside in said territory, shall be the commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs; he may grant pardons and remit fines and forfeitures for offences against the laws of said territory, and respites for offences against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, where, by law, such commissions shall be required, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a secretary of said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of said territory shall be vested in a legislative assembly, which shall consist of a council and house of representatives. The council shall consist of nine members, having the qualification of voters, as hereinafter prescribed, whose term of service shall continue three years. Immediately after they shall be assembled, in consequence of their first election, they shall be divided as equally as may be into three classes. The seats of the members of council of the first class shall be vacated at the expiration of the first year, of the second class at the expiration of the second year, and of the third class at the expiration of the third year, so that one-third may be chosen every year; and if vacancies happen, by resignation or otherwise, the same shall be filled at the next ensuing election. The house of representatives shall, at its first session, consist of eighteen members, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, That the whole number shall never exceed thirty. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken, by such persons, and in such mode, as the governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act; and the governor shall, by his proclamation, give at least sixty days previous notice of such apportionment, and of the time, places, and manner of holding such election. The persons having the highest number of legal votes in each of said council districts for members of the council, shall be declared by the governor to be duly elected to the council, and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of said house; *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place, and on such day, within ninety days after such elections, as the governor shall appoint. But thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular session of the legislative assembly: *Provided*, That no session in any one year shall exceed the term of sixty days, except the first session, which shall not exceed one hundred days.

SEC. 5. *And be it further enacted*, That every white male inhabitant above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the legislative assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and those above that age who shall have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States, and the provisions of this act: *And provided further*, That no officer, soldier, seaman, mariner, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote in said territory, by reason of being on service therein, unless said territory is, and has been for the period of six months, his permanent domicil: *Provided further*, That no person belonging to the army or navy of the United States shall ever be elected to or hold any civil office or appointment in said territory.

SEC. 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation, not inconsistent with the constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly shall be submitted to the congress of the United States, and, if disapproved, shall be null and of no effect: *Provided*, That nothing in this act shall be construed to give power to incorporate a bank or any institution with banking powers, or to borrow money in the name of the territory, or to pledge the faith of the people of the same for any loan whatever, directly or indirectly. No charter granting any privileges of making, issuing, or putting into circulation any notes or bills in the likeness of bank notes, or any bonds, scrip, drafts, bills of exchange, or granting any other banking powers or privileges, shall be passed by the legislative assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said territory; nor shall said legislative assembly authorize the issue of any obligation, scrip, or evidence of debt, by said territory, in any mode or manner whatever, except certificates for service to said territory. And all such laws, or any law or laws inconsistent with the provisions of this act, shall be utterly null and void. And all taxes shall be equal and uniform; and no distinctions shall be made in the assessments between the different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

SEC. 7. *And be it further enacted,* That all township, district, and county officers not herein otherwise provided for, shall be appointed or elected in such manner as shall be provided by the legislative assembly of the territory of Washington.

SEC. 8. *And be it further enacted,* That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

SEC. 9. *And be it further enacted,* That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts, by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law; *Provided,* That justices of the peace shall not have jurisdiction of any case in which the title to land shall in anywise come in question, or where the debt or damages claimed shall exceed one hundred dollars; and the said supreme and district courts respectively shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district court to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit court of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars, and in all cases where the constitution of the United States, or acts of congress, or a treaty of the United States, is brought in question; and each of said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution of the United States and the laws of said territory, as is vested in the circuit and district courts of the United States; writs of error and appeal in all such cases shall be made to the supreme court of said territory the same as in other cases. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed and may be taken to the supreme court of the United States in the same manner as from the circuit courts of the United States, where the value of the property, or the amount in controversy, shall exceed two thousand dollars, and each of said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and also of all cases arising under the laws of said territory, and otherwise. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of the territory of Oregon receive for similar services.

Sec. 10. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office for four years and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall receive the same fees and salary as is provided by law for the attorney of the United States for the territory of Oregon. There shall also be a marshal for the territory appointed, who shall hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees, as are provided by law for the marshal of the territory of Oregon, and shall, in addition, be paid the sum of two hundred dollars annually as a compensation for extra services.

SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the president of the United States.—The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws in force therein, or before the chief justice or some associate justice of the supreme court, of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted, by the person taking the same, to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and fifteen hundred dollars as superintendent of Indian affairs. The chief justice, and associate justices, shall each receive an annual salary of two thousand dollars. The secretary shall receive an annual salary of fifteen hundred dollars. (The said salaries shall be paid quarter yearly, from the dates of the respective appointments, at the treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments.) The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars each for every twenty miles' travel in going to and returning from said sessions, estimated according to the nearest usually travelled route. And a chief clerk, one assistant clerk, a sergeant-at-arms, and door keeper, may be chosen for each house; and the chief clerk shall receive five dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the legislative assembly annually, unless, on an extraordinary occasion, the governor shall deem it expedient and proper to call the legislature together. There shall be appropriated, annually, the sum of fifteen hundred dollars, to be expended by the governor, to defray the contingent expenses of the territory, including the salary of a clerk of the executive department; and there shall also be appropriated, annually, a sufficient sum to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the governor and secretary of the territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall, semi-annually, account to the said secretary for the manner in which the aforesaid sums of money shall have been expended; and no expenditure to be paid out of money appropriated by congress, shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the apropriations, nor beyond the sums thus appropriated for such objects.

SEC. 12. *And be it further enacted*, That the laws now in force in said territory of Washington, by virtue of the legislation of congress in reference to the territory of Oregon, which have been enacted and passed subsequent to the first day of September, eighteen hundred and forty-eight, applicable to the said territory of Washington, together with the legislative enactments of the territory of Oregon, enacted and passed prior to the passage of, and not inconsistent with, the provisions of this act, and applicable to the said territory of Washington, be, and they are hereby, continued in force in said territory of Washington until they shall be repealed or amended by future legislation.

SEC. 13. *And be it further enacted*, That the legislative assembly of the territory of Washington shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the legislative assembly shall proceed to locate and establish the seat of government for said territory, at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by said legislative assembly. And the sum of five thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby appropriated and granted to said territory of Washington, to be there applied by the governor to the erection of suitable buildings at the seat of government.

SEC. 14. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as have been heretofore exercised and enjoyed by the delegates from the several other territories of the United States to the house of representatives, but the delegate first elected, shall hold his seat only during the term of the congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; of which, and the time, place, and manner of holding such elections, he shall give at least sixty days' notice by proclamation; and at all subsequent elections, the time, places, and manner of holding the elections shall be prescribed by law.—The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. The delegate from said territory shall be entitled to receive the same per diem compensation and mileage at present allowed the delegate from the territory of Oregon.

SEC. 15. *And be it further enacted,* That all suits, plaints, process and proceedings, civil and criminal, at law and in chancery, and all indictments and informations, which shall be pending and undetermined in the courts established within and for said territory of Oregon, by act of congress, entitled "an act to establish the territorial government of Oregon," approved August fourteen, one thousand eight hundred and forty-eight, wherein the venue in said causes, suits at law, or in chancery, or criminal proceedings, shall be included within the limits hereinbefore declared and established for the said territory of Washington; then, and in that case, said actions so pending in the supreme or circuit courts of the territory of Oregon shall be, by the clerks of said courts, duly certified to the proper courts of said territory of Washington; and thereupon said causes shall, in all things concerning the same, be proceeded on, and judgments, verdicts, decrees, and sentences rendered thereon, in the same manner as if the said territory had not been divided. All bonds, recognizances, and obligations of every kind whatsoever, valid, under existing laws, within the limits of said territory of Oregon, shall be held valid under this act, and all crimes and misdemeanors against the laws now in force within the said limits of the territory of Washington may be prosecuted, tried, and punished in the courts established by this act, and all penalties, forfeitures, actions, and causes of action, may be recovered and enforced, under this act, before the supreme and circuit courts established by this act as aforesaid; *Provided,* That no right of action whatever shall accrue against any person for any act done in pursuance of any law heretofore passed by the legislative assembly of the territory of Oregon, and which may be declared contrary to the constitution or laws of the United States.

SEC. 16. *And be it further enacted,* That all justices of the peace, constables, sheriffs, and other judicial and ministerial officers, who shall be in office within the limits of said territory of Washington when this act shall take effect, shall be and they are hereby authorized and required to continue to exercise and perform the duties of their respective offices, as officers of said territory, until they or others shall be duly elected or appointed, and qualified, to fill their places in the manner herein directed, or until their offices shall be abolished.

SEC. 17. *And be it further enacted,* That the sum of five thousand dollars be, and the same is hereby appropriated out of any moneys in the treasury not otherwise appropriated, to be expended by and under the direction of the governor of Washington, in the purchase of a library, to be kept at the seat of government for the use of the governor, legislative assembly, judges of the supreme court, secretary, marshal, attorney of the territory, and such other persons and under such regulations as shall be prescribed by law.

SEC. 18. *And be it further enacted,* That until otherwise provided for by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or sub-divisions in each of said judicial districts by proclamation, to be issued by him; but the legislative assembly, at their first, or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the time and places of holding the courts, as to them shall seem expedient and proper.

SEC. 19. *And be it further enacted,* That all officers to be appointed by the president, by and with the advice and consent of the senate, for the territory of Washington, who, by virtue of the provisions of any law of congress now existing, or which may be enacted during the present session of congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security at such time and place and in such manner, as the secretary of the treasury may prescribe.

SEC. 20. *And be it further enacted,* That when the lands in said territory shall be surveyed under the direction of the government of the United States preparatory to bringing the same into market or otherwise disposing thereof, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to common schools in said territory. And in all cases where said sections sixteen and thirty-six, or either or any of them, shall be occupied by actual settlers, prior to survey thereof, the county commissioners of the counties in which said sections so occupied as aforesaid are situated, be, and they are hereby, authorized to locate other lands to an equal amount in sections, or fractional sections, as the case may be, within their respective counties, in lieu of said section so occupied as aforesaid.

SEC. 21. *And be it further enacted,* That the territory of Oregon and the territory of Washington shall have concurrent jurisdiction over all offences committed on the Columbia river, where said river forms a common boundary between said territories.

APPROVED, March 2, 1853.

ACT OF CONGRESS,

CREATING THE OFFICE OF SURVEYOR GENERAL OF THE PUBLIC LANDS IN OREGON, AND TO PROVIDE FOR THE SURVEY, AND TO MAKE DONATIONS TO SETTLERS OF THE SAID PUBLIC LANDS.

Sec. 1. A surveyor general to be appointed—his duties and authority.
2. Surveyor general's office to be established where the president shall designate; salary of surveyor general—appropriation for clerk hire and office rent.
3. The secretary of the interior to designate the method of the survey; proviso as to land unfit for cultivation—the cost of the survey not to exceed eight dollars per mile.
4. Donations of 640 and 320 acres to citizens of the United States—no alien to be entitled to the benefit of this act unless his declaration of intention is made—the donation to embrace the land occupied—certain contracts to be void—persons claiming under this act not to hold under the treaty of '46.
5. Donation of 320 and 160 acres to citizens of the United States up to 1st Dec. 1853—no person to receive but one patent, and no mineral lands to be located.
6. Notifications to be filed—when, where and how record to be kept—surveyor general to decide all conflicts of boundaries; proviso as to lines running with section lines.
7. Of final proof and the issuing of patents.
8. Upon the death of a claimant his rights to extend to his heirs at law.
9. Certain claims invalid.
10. Two townships of land granted to the territory of Oregon to establish a university.
11. The "Oregon city claim" granted to the territory except certain portions thereof.
12. Affidavits of cultivation &c., to be made before the surveyor general, and to be recorded by him.
13. Questions arising under this act to be decided by the surveyor general—duty of the surveyor general.
14. Land not to be claimed under this act; proviso as to military reservations.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a surveyor general shall be appointed for the territory of Oregon, who shall have the same authority, perform the same duties respecting the public lands and private land claims in the territory of Oregon, as are vested in and required of the surveyor of lands in the United States northwest of the Ohio, except as hereinafter provided.

Sec. 2. *And be it further enacted*, That the said surveyor general shall establish his office at such place, within the said territory, as the president of the United States may from time to time direct; he shall be allowed an annual salary of two thousand five hundred dollars, to be paid quarter-yearly, and to commence at such time as he shall enter into bond, with competent security, for the faithful discharge of the duties of his office. There shall be, and hereby is, appropriated the sum of four thousand dollars, or as much thereof as is necessary for clerk hire in his office: and the further sum of one thousand dollars per annum for office rent, fuel, books, stationery, and other incidental expenses of his office, to be paid out of the appropriation for surveying the public lands.

Sec. 3. *And be it further enacted*, That, if in the opinion of the secretary of the interior, it be preferable, the surveys in said territory shall be made after what is known as the geodetic method, under such regulations, and upon such terms, as may be provided by the secretary of the interior, or other department having charge of the surveys of the public lands, and that said geodetic surveys shall be followed by topographical surveys, as congress may from time to time authorize and direct; but if the present mode of survey be adhered to, then it shall be the duty of said surveyor to cause a base line, and meridian to be surveyed, marked, and established, in the usual manner, at or near the mouth of the Wallamet river; and he shall also cause to be surveyed, in townships and sections, in the usual manner, and in accordance with the laws of the United States, which may be in force, the district of country lying between the summit of the Cascade mountains and the Pacific ocean, and south and north of the Columbia river: *Provided however*, that none other than township lines shall be run, where the land is deemed unfit for cultivation. That no deputy surveyor shall charge for any line except such as may be actually run and marked, nor for any line not necessary to be run; and that the whole cost of surveying shall not exceed the rate of eight dollars per mile, for every mile and part of mile actually surveyed and marked.

Sec. 4. *And be it further enacted*, That there shall be and hereby is, granted to every white settler or occupant of the public lands, American half-breed Indians included, above the age of eighteen years, being a citizen of the United States, or having made a declaration according to law, of his intention to become a citizen, or who shall make such declaration on or before the first day of December, eighteen hundred and fifty-one, now residing in said territory, or who shall become a resident thereof, on or before the first day of December, eighteen hundred and fifty, and who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act, the quantity of one-half section, or three hundred and twenty acres of land, if a single man, and if a married man, or if he shall become married within one year from the first day of December, eighteen hundred and fifty, the quantity of one section, or six hundred and forty acres, one-half to himself and the other half to his wife, to be held by her in her own right; and the surveyor general shall designate the part enuring to the husband and that to the wife, and enter the same on the records of his office; and in all cases where such married persons have complied with the provisions of this act, so as to entitle them to the grant as above provided, whether under the late provisional government of Oregon, or since, and either shall have died before patent issues, the survivor and children, or heirs of the deceased shall be entitled to the share or interest of the deceased, in equal proportions, except where the deceased shall otherwise dispose of it by testament duly and properly executed according to the laws of Oregon: *Provided*, that no alien shall be entitled to a patent to land, granted by this act, until he shall produce to the surveyor general of Oregon, record evidence that his naturalization as a citizen of the United States has been completed; but if any alien, having made his declaration of an intention to become a citizen of the United States, after the passage of this act, shall die before his naturalization shall be completed, the possessory right acquired by him under the provisions of this act, shall descend to his heirs at law, or pass to his devisees, to whom, as the case may be, the patent shall issue: *Provided further*, that in all cases provided for in this section, the donation shall embrace the land actually occupied and cultivated by the settler thereon: *Provided further*, that all future contracts, by any person or persons entitled to the benefit of this act, for the sale of the land to which he or they may be entitled under this act, before he or they have received a patent therefor, shall be void; *Provided further, however*, that this section shall not be so construed as to allow those claiming rights under the treaty with Great Britain, relative to the Oregon territory, to claim both under this grant and the treaty, but merely to secure them the election, and confine them to a single grant of land.

Sec. 5. *And be it further enacted*, That to all white male citizens of the United States, or persons who shall have made a declaration of intention to become such, above the age of twenty-one years, emigrating to, and settling in said territory, between the first day of December, eighteen hundred and fifty, and the first day of December, eighteen hundred and fifty-three; and to all white male American citizens, not hereinbefore provided for, becoming one and twenty years of age, in said territory, and settling there between the times last aforesaid, who shall in other respects comply with the foregoing section and the provisions of this law, there shall be, and hereby is granted the quantity of one quarter section, or one hundred and sixty acres of land, if a single man; or if married, or if he shall become married within one year from the time of arriving in said territory, or within one year after becoming twenty-one years of age as aforesaid, then the quantity of one half section, or three hundred and twenty acres, one half to the husband, and the other half to the wife in her own right, to be designated by the surveyor general as aforesaid: *Provided always*, that no person shall ever receive a patent for more than one donation of land in said territory in his or her own right: *Provided*, that no mineral lands shall be located or granted under the provisions of this act.

SEC. 6. *And be it further enacted*, That within three months after the survey has been made, or where the survey has been made before the settlement commenced, then within three months from the commencement of such settlement, each of said settlers shall notify the surveyor general, to be appointed under this act, of the precise tract or tracts claimed by them respectively, under this law, and in all cases it shall be in a compact form; and where it is practicable so to do, the land so claimed shall be taken as nearly as practicable, by legal sub-divisions; but where that cannot be done, it shall be the duty of the said surveyor general to survey and mark each claim, with the boundaries as claimed, at the request and expense of the claimant; the charge for the same in such case, not to exceed the price paid for surveying the public lands. The surveyor general shall enter a description of such claims in a book to be kept by him for that purpose, and note, temporarily on the township plats, the tract or tracts so designated, with the boundaries; and whenever a conflict of boundaries shall arise prior to issuing the patent, the same shall be determined by the surveyor general: *Provided*, that after the first December next, all claims shall be bounded by lines running east and west, and north and south:—*And provided further*, that after the survey is made, all claims shall be made in conformity to the same, and in compact form.

SEC. 7. *And be it further enacted*, That within twelve months after the surveys have been made, or where the survey has been made before the settlement, then within twelve months from the time the settlement was commenced, each person claiming a donation right under this act, shall prove to the satisfaction of the surveyor general, or of such other officer as may be appointed by law for that purpose, that the settlement and cultivation required by this act had been commenced, specifying the time of the commencement; and at any time after the expiration of four years from the date of such settlement, whether made under the laws of the late provisional government or not, shall prove in like manner, by two disinterested witnesses, the fact of continued residence and cultivation required by the fourth section of this act; and upon such proof being made, the surveyor general, or other officer appointed by law for that purpose, shall issue certificates, under such rules and regulations as may be prescribed by the commissioner of the general land office, setting forth the facts in the case, and specifying the land to which the parties are entitled. And the said surveyor general shall return the proof so taken, to the office of the commissioner of the general land office, and if the said commissioner shall find no valid objection thereto, patents shall issue for the land, according to the certificates aforesaid, upon the surrender thereof.

Sec. 8. *And be it further enacted,* That upon the death of any settler before the expiration of the four years' continued possession required by this act, all the rights of the deceased under this act, shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler, shall be sufficient to entitle them to the patent.

Sec. 9. *And be it further enacted,* That no claim to a donation right under the provisions of this act, upon sections sixteen or thirty-six, shall be valid or allowed, if the residence and cultivation upon which the same is founded, shall have commenced after the survey of the same; nor shall such claim attach to any tract or parcel of land selected for a military post, or within one mile thereof, or to any other land reserved for government purposes, unless the residence or cultivation thereof shall have commenced previous to the selection or reservation of the same for such purposes.

Sec. 10. *And be it further enacted,* That there be, and hereby is granted to the territory of Oregon, the quantity of two townships of land in said territory, west of the Cascade mountains, and to be selected in legal subdivisions after the same has been surveyed, by the legislative assembly of said territory, in such manner as it may deem proper, one to be located north, and the other south of the Columbia river, to aid in the establishment of a university in the territory of Oregon, in such manner as the said legislative assembly may direct, the selection to be approved by the surveyor general.

Sec. 11. *And be it further enacted,* That what is known as the "Oregon city claim," excepting the Abernethey Island, which is hereby confirmed to the legal assigns of the Wallamet milling and trading companies, shall be set apart and be at the disposal of the legislative assembly, the proceeds thereof to be applied by said legislative assembly to the establishment and endowment of a university, to be located at such place in the territory as the legislative assembly may designate: *Provided, however,* that all lots and parts of lots in said claim, sold or granted by Doctor John McLaughlin, previous to the fourth of March, eighteen hundred and forty-nine, shall be confirmed to the purchaser or donee, or their assigns, to be certified to the commissioner of the general land office, by the surveyor general, and patents to issue on said certificates, as in other cases: *Provided further,* that nothing in this act contained, shall be so construed and executed, as in any way to destroy or affect any rights to land in said territory, holden or claimed under the provisions of the treaty or treaties, existing between this country and Great Britain.

SEC. 12. *And be it further enacted,* That all persons claiming land under any of the provisions of this act, by virtue of settlement and cultivation commenced subsequent to the first of December, in the year eighteen hundred and fifty, shall first make affidavit before the surveyor general, who is hereby authorized to administer all such oaths or affirmations, or before some other competent officer, that the land claimed by them is for their own use and cultivation; that they are not acting directly or indirectly, as agent for, or in the employment of others, in making such claims; and that they have made no sale, or transfer, or any arrangement or agreement, for any sale, transfer, or alienation of the same, or by which the said land shall enure to the benefit of any other person. And all affidavits required by this act, shall be entered of record, by the surveyor general, in a book to be kept by him for that purpose; and on proof, before a court of competent jurisdiction, that any of such oaths or affirmations are false or fraudulent, the persons making such false or fraudulent oaths, or affirmations, shall be subject to all the pains and penalties of perjury.

SEC. 13. *And be it further enacted,* That all questions arising under this act, shall be adjudged by the surveyor general as preliminary to a final decision according to law; and it shall be the duty of the surveyor general, under the direction of the commissioner of the general land office, to cause proper tract books to be opened for the lands in Oregon, and to do and perform all other acts and things necessary and proper to carry out the provisions of this act.

SEC. 14. *And be it further enacted,* That no mineral lands, nor lands reserved for salines, shall be liable to any claim under and by virtue of the provisions of this act; and that such portions of the public lands as may be designated under the authority of the president of the United States, for forts, magazines, arsenals, dock-yards, and other needful public uses, shall be reserved and excepted from the operation of this act; *Provided,* that if it shall be deemed necessary, in the judgment of the president, to include in any such reservation, the improvements of any settler made previous to the passage of this act, it shall in such case be the duty of the secretary of war, to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money not otherwise appropriated.

APPROVED, September 27, 1850.

AN ACT

TO AMEND AN ACT, ENTITLED "AN ACT TO CREATE THE OFFICE OF SURVEYOR GENERAL OF THE PUBLIC LANDS IN OREGON, AND TO PROVIDE FOR THE SURVEY, AND TO MAKE DONATIONS TO THE SETTLERS OF THE SAID PUBLIC LANDS," APPROVED SEPTEMBER 27TH, 1850.

SEC. 1. Settlers allowed to purchase their lands, after two years' residence, at one dollar and twenty-five cents per acre.
SEC. 2. How a patent may issue to such settler.
SEC. 3. Surveyor general to keep a record and make report to the general land office.
SEC. 4. Surveyor general to give additional bond.
Compensation for such duties.
SEC. 5. Provisions of the original act extended.
SEC. 6. Certain persons debarred the benefits of the act to which this is an amendment.
SEC. 7. Certain lands subject to private entry after the 1st April, 1855.
Register and receiver to be appointed.
Their pay and duties.
SEC. 8. Certain widows entitled to the benefit of the land law.
SEC. 9. Limitation of reservations.
SEC. 10. The surveyor general subject to the provisions of congress for the safe-keeping and disbursement of public revenue.

SEC. 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled,* That all persons who have located, or may hereafter locate lands in the territory of Oregon, in accordance with the provisions of an act, entitled "an act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands," approved September twenty-seventh, eighteen hundred and fifty, and of which survey shall have been made or may hereafter be had, in lieu of the term of continued occupation after settlement, as provided by said act, shall be permitted, after occupation for two years of the land so claimed, to pay into the hands of the surveyor general of said territory, at the rate of one dollar and twenty-five cents per acre for the land so claimed, located, and surveyed as aforesaid; and upon the death of any settler before the expiration of the two years' continued possession required by this act, all the rights of the deceased under this act shall descend to the heirs-at-law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act, up to the time of the death of such settler, shall be sufficient to entitle them to the patent.

Sec. 2. *And be it further enacted,* That upon the payment of money for lands as aforesaid to the said surveyor general, he shall issue his certificate of such payment, together with an accurate copy of the survey of the land so located and purchased, to the purchaser thereof, and upon the filing of which said certificate and copy of survey in the office of the commissioner of the general land office, a patent shall issue therefor as in other cases.

Sec. 3. *And be it further enacted,* That it shall be the duty of the said surveyor general to keep and preserve a record of all moneys so received, and to make out and transmit quarterly, to the commissioner of the general land office, an accurate report of the moneys so received by him as aforesaid.

Sec. 4. *And be it further enacted,* That it shall be the duty of the said surveyor general immediately upon the taking effect of this act, to enter into security in the sum of fifty thousand dollars, conditioned for the safe-keeping of all moneys received by him as surveyor general according to law: *Provided, however,* That, in order to compensate the surveyor general of said territory for the additional labors and responsibility imposed upon him by this act, in receiving, safe-keeping, paying over, and accounting for the moneys aforesaid, he shall receive per centum on all such sums, which shall include the payment for clerk hire, together with all costs and expenses incidental to such special services in any one year: *Provided,* The salary and per centage of said surveyor general, and for clerk hire, shall not exceed four thousand dollars for any one year.

Sec. 5. *And be it further enacted,* That the provisions of the act to which this is an amendment be, and the same are hereby, extended and continued in force until the first day of December, eighteen hundred and fifty-five.

Sec. 6 *And be it further enacted,* That every person entitled to the benefit of the fourth section of the act of which this is amendatory, who was resident in said territory on or prior to the first of December, eighteen hundred and fifty, shall be, and hereby is required to file with the surveyor general of said territory, in advance of the time when the public surveys shall be extended over the particular land claimed by him, where those surveys shall not have been made previous to the date of this act, a notice in writing, setting forth his claim to the benefits of said section, and citing all required particulars in reference to such settlement claim; and all persons failing to give such notice on or prior to the first of December, eighteen hundred and fifty-three, shall be thereafter debarred from ever receiving any benefit under said fourth section. And all persons who, on the first December, eighteen hundred and fifty-three, shall have settled on surveyed lands in said territory, in virtue of the provisions of the fifth section of the act of which this is amendatory, who shall fail to give notice in writing of such settlement, specifying the particulars thereof to the surveyor general of said territory, on or prior to the first of April, eighteen hundred and fifty-five, shall be thereafter debarred from ever receiving the benefits of said fifth section.

SEC. 7. *And be it further enacted,* That from and after the first of April, eighteen hundred and fifty-five, all public lands within the limits of the townships surveyed or to be surveyed in said territory, west of the Cascade mountains, which shall not have been claimed under the provisions of the fourth and fifth sections of the act of which this is amendatory, or reserved for public uses by law or order of the president, and excepting also mineral lands, shall be subject to public sale and private entry as other public lands in the United States; and so soon as he shall deem expedient, the president of the United States shall, by and with the advice and consent of the senate, appoint a receiver of public moneys for the territory of Oregon, west of the Cascade mountains, who shall give bond and security, in the penalty of fifty thousand dollars, for the faithful discharge of his official trust, and whose duties, under the laws in relation to the public lands of the United States in said territory, shall be the same as those of other like officers of the United States, and who shall be allowed not exceeding five hundred dollars per annum for the safe-keeping and accounting for the public moneys by him received, including all charges for office rent and clerk hire; and at such time as the president of the United States shall deem it expedient, he shall appoint, by and with the advice and consent of the senate, a register of the land office for the territory of Oregon, west of the Cascade mountains, who shall enter into bond, with sufficient security, for the faithful discharge of his official duties, as other like officers, and whose duties and authority, under the direction of the secretary of the interior, shall be the same as those imposed by law on other like officers, consistently with the provisions of this act and of the act of which this is amendatory, and whose compensation shall be equal to that allowed to the receiver of public moneys to be appointed under this act; and until such register shall have been appointed, and entered upon the discharge of his official duties, the surveyor general of Oregon shall perform all the duties which shall appertain to such office.

SEC. 8. *And be it further enacted,* That each widow now residing in Oregon territory, and such others as shall locate in said territory, whose husband, had he lived, would have been entitled to a claim under the provisions of the act to which this is an amendment, shall be entitled under the provisions and requirements of said act, to the same quantity of land that she would have been but for the death of her husband; and that in case the death of the widow prior to the expiration of the four years' continued possession required by said act, to which this is an amendment, all the rights of the deceased shall inure unto, and be vested in, the heirs-at-law of such widow.

SEC. 9. *And be it further enacted,* That all reservations heretofore, as well as hereafter, made in pursuance of the fourteenth section of the act to which this is an amendment, shall for magazines, arsenals, dock yards, and other needful public uses, except for forts, be limited to an amount not exceeding twenty acres for each and every of said objects at any one point or place, and for forts to an amount not exceeding six hundred and forty acres at any one point or place: *Provided,* That if it shall be deemed necessary, in the judgment of the president, to include in any such reservation the improvement of any settler made previous to such reservation, it shall, in such case, be the duty of the secretary of war to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money in the treasury not otherwise appropriated.

SEC. 10. *And be it further enacted,* That the said surveyor general, in the discharge of his duties under this act, shall be subject to all the provisions of the act entitled "an act to provide for the better organization of the treasury, and for the collection, safe-keeping, transfer, and disbursement of the public revenue," approved August sixth, eighteen hundred and forty-six; and all acts and parts of acts in conflict with the provisions of this act be, and the same are hereby, repealed.

Approved February 14, 1853.

AN ACT

TO AMEND THE ACT, APPROVED SEPTEMBER TWENTY-SEVENTH, EIGHTEEN HUNDRED AND FIFTY, TO CREATE THE OFFICE OF SURVEYOR GENERAL OF THE PUBLIC LANDS IN OREGON, &c., AND ALSO THE ACT AMENDATORY THEREOF, APPROVED FEBRUARY NINETEEN, EIGHTEEN HUNDRED AND FIFTY-THREE.

SEC. 1. Town sites not to be included in donations heretofore made.
Proviso changing the time for the purchase of lands to one instead of two years.
2. That portion of the law making contracts for the sale of lands by settlers repealed.
3. Pre-emption privilege extended to lands in Oregon and Washington territories.
Notifications to be filed within thirty days after requested to do so.
Time further extended.
4. Two townships of land granted to this territory for university purposes.
5. Orphans entitled to 160 acres of land.
Surveyor generaal to set apart the land for orphans.
6. All the provisions of this act extended to Washington territory, and a register and receiver to be appointed. Their compensation.
7. A surveyor general to be appointed.
His duties, powers and obligations the same as in Oregon.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the donations hereafter to be surveyed in Oregon and Washington territories, claimed under any of the provisions of the act to create the office of surveyor general of the public lands in Oregon, &c., approved September twenty-seven, eighteen hundred and fifty, shall in no case include a town site, or lands settled upon for purposes of business or trade, and not for agriculture;—and all legal sub-divisions included in whole or in part in such town sites, or settled upon for purposes of business or trade, and not for agriculture, shall be subject to the operations of the act of May twenty-three, eighteen hundred and forty-four, "for the relief of citizens of towns upon lands of the United States, under certain circumstances," whether such settlements were made before or after the surveys: *Provided however,* That the period of two years' occupancy required of settlers before they can purchase the lands claimed by them under the provisions of the first section of the act of February fourteen, eighteen hundred and fifty-three, above mentioned, shall be, and the same is hereby reduced to one year.

SEC. 2. *And be it further enacted,* That the proviso to the fourth section of the act of twenty-seventh September, eighteen hundred and fifty, above mentioned, by which all contracts for the sale of lands claimed under that law, before the issue of patents therefor, are declared void, shall be, and the same is hereby repealed: *Provided*, That no sale shall be deemed valid, unless the vendor shall have resided four years upon the land.

SEC. 3. *And be it further enacted*, That the pre-emption privilege granted by the act of fourth September, eighteen hundred and forty-one, shall be, and the same is hereby, extended to the lands in Oregon and Washington territories, whether surveyed or unsurveyed, not rightfully claimed, entered, or reserved, under the provisions of this act, or the acts of which it is amendatory, nor excluded by the terms of the said act of eighteen hundred and forty-one, with the exception of unsurveyed lands as above mentioned; and all settlers on unsurveyed lands in said territories shall give notice to the surveyor general, or other duly authorized officer, of the particular tract claimed under this section, within six months after the survey of such lands is made and returned. And all persons claiming donations under this act, or the acts of which it is amendatory, shall, in like manner give notice to the surveyor general, or other duly authorized officer, of the particular lands claimed as such donations, within thirty days after being requested to do so by such officer; and failing such notice in either case, the claimant or claimants shall forfeit all right and claim thereto; *Provided however*, That the time limited by the sixth section of the act of eighteen hundred and fifty-three, in which claimants under the act of eighteen hundred and fifty are required to give notice of their claims, shall be, and the same is hereby extended to the first of December, eighteen hundred and fifty-five, except in cases where the surveyor general shall request them to do so, as above provided.

SEC. 4. *And be it further enacted*, That in lieu of the two townships of land granted to the territory of Oregon by the tenth section of the act of eighteen hundred and fifty, for universities, there shall be reserved to each of the territories of Washington and Oregon, two townships of land of thirty-six sections each, to be selected in legal sub-divisions for university purposes, under the direction of the legislatures of said territories respectively.

SEC. 5. *And be it further enacted*, That in any case where orphans have been, or may be left in either of the said territories, whose parents, or either of them while living, would have been entitled to a donation under this act, or either of those of which it is amendatory, said orphans shall be entitled to a quarter section of land on due proof being made to the satisfaction of the surveyor general, subject to the decision of the secretary of the Interior. Said land to be set off to them by the surveyor general in good agricultural land, not reserved, or otherwise appropriated, under any law of congress; and, in case of the death of either or any of said orphans, after their lands shall have been designated by the surveyor general, the right or rights of the deceased shall vest in the survivor or survivors.

Sec. 6. *And be it further enacted,* That all the provisions of this act, and the acts of which it is amendatory, shall be extended to all the lands in Oregon and Washington territories; and, for the purpose of carrying said acts into effect in said territories, the president shall be, and he is hereby authorized to appoint a register and receiver for each of said territories, whose powers, duties, obligations and responsibilities, shall be the same as are now prescribed by law for other land officers, and for the surveyor general of Oregon, so far as they apply to such officers. They shall keep their offices at such place as the president shall, from time to time, direct; and their compensation shall be twenty-five hundred dollars each per annum, and office rent; but they shall be entitled to no fees or other emolument of any kind whatsoever, except the receiver's actual and necessary expenses in depositing; and, on satisfactory proof that either of said officers, or any other officer, has charged or received fees or other rewards not authorised by law, he shall be forthwith removed from office.

Sec. 7. *And be it further enacted,* That the territory of Washington shall be erected into a separate surveying district, and the president of the United States is hereby authorized to appoint a surveyor general for the same, who shall hold his office at such place as the president may direct, and the location thereof may be changed from time to time, if, in the judgment of the president, the public interest should require it, and the powers, duties, obligations, responsibilities and emoluments of the said surveyor general shall be the same as are now prescribed by law for the surveyor general of Oregon.

Approved 17th July, 1854.

ABSTRACT.

OF THE LAWS OF THE UNITED STATES IN RELATION TO THE NATURALIZATION OF ALIENS.

SEC. 1. Who may be admitted as citizens.
2. Form of declaration two years prior to admission, and before whom made.
3. Certain persons exempted from preceding conditions.
4. Admission of minors who arrive in the United States when not over 18 years of age.
5. When widow and children of deceased alien deemed citizens.
6. Oath upon admission.
7. Proof of character and residence, before admission, and by whom to be made.
8. Alien to renounce hereditary title—record thereof—to be citizen of country at peace with United States.
9. As to aliens residing in the United States in 1812.
10. As to aliens residing in the United States between 1802 and 1812.
11. As to aliens residing in the United States between 1798 and 1802, what proof of residence required, and how set forth in record, to render admission valid.
12. What children of aliens, &c., deemed citizens. Proscribed persons not to be admitted.
13. As to aliens residing in the United States prior to 1795.
14. What state courts may admit aliens.
15. Five years' residence required before admission of alien who arrives in the United States after 1815.

SEC. 1. Any alien being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

SEC. 2. *First:* That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, two years at least before his admission, that it was *bona fide*, his intention to become a citizen of the United States, and to renounce forever, all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject.

SEC. 3. From this condition are exempted, any alien being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, 1798, and the fourteenth day of April, 1802, and who has continued to reside within the same.

SEC. 4. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to be a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the second section, three years previous to his admission: But, such alien shall make the declaration, required therein, at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that for three years next preceding, it has been the *bona fide* intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.

SEC. 5. When any alien, who shall have complied with the condition specified in section second, and who shall have pursued the directions prescribed in the second section of the act of April 14, 1802, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

SEC. 6. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

SEC. 7. The court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year, at least; and it shall further appear to their satisfaction that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The oath of the applicant shall, in no case, be allowed to prove his residence.

SEC. 8. In case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state, from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, That no alien, who shall be a native citizen, denizen or subject of any country, state or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States.

SEC. 9. But persons resident within the United States or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had, before that day, made a declaration, according to law, of their intention to become citizens of the United States; or who, by the existing laws of the United States, were, on that day, entitled to become citizens, without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies, at the times, and in the manner prescribed by the laws heretofore passed on that subject: *Provided*, That nothing herein contained, shall be taken or construed to interfere with, or prevent the apprehension and removal agreeably to law of any alien, enemy, at any time previous to the actual naturalization of such alien.

SEC. 10. Any alien being a free white person, who was residing within the limits, and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: *Provided*, That whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand, eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted: and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the

United States; which citizens shall be named in the record as witnesses; and such continued residence within the limits and jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided, for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court, admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

SEC. 11. Nothing in the foregoing section, ten, contained, shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States, according to section three. Whenever any person, without a certificate of such declaration of intention as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant: otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

SEC. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. The right of citizenship shall not descend to persons whose fathers have never resided within the United States: And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen, without the consent of the legislature of the state in which such person was proscribed. Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, 1802, to be considered as citizens of the United States.

Sec. 13. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; and moreover, on its appearing to the satisfaction of the court that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and when the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making, in the court, an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceeding, required in this proviso to be performed in the court, shall be recorded by the clerk thereof.

Sec. 14. Every court of record, in any individual state, having common law jurisdiction, and a seal and clerk or prothonotary, shall be considered as a district court, within the meaning of the naturalization act; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

Sec. 15. No person who shall have arrived in the United States, after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States.

STATUTES

OF THE

TERRITORY OF WASHINGTON.

AN ACT

RELATING TO ELECTIONS AND THE MODE OF SUPPLYING VACANCIES.

CHAPTER I.

Sec. 1. Qualification of voters.
Sec. 2. Certain persons not entitled to vote.
Sec. 3. General election; time of.
Sec. 4. Appointment of judges; notice of appointment.
Sec. 5. Clerks, election of; how long to serve.
Sec. 6. Notices of election; when, and by whom made out; form of.
Sec. 7. Notices to be posted up by sheriff.
Sec. 8. Oaths to be taken by judges and clerks.
Sec. 9. By whom administered.
Sec. 10. Opening and closing of the polls.
Sec. 11. Poll books to be furnished.
Sec. 12. Manner of voting.
Sec. 13. Judge receiving the ticket to proclaim the name of the elector, &c.
Sec. 14. Place of voting.

SEC. 15. Person challenged to make oath.
SEC. 16. Ballot box to be provided.
SEC. 17. Same to be opened and examined before opening the polls.
SEC. 18. Poll lists to be corrected at each adjournment of the polls.
SEC. 19. Poll book to be placed in ballot box, and same to be locked, &c.
SEC. 20. Disposition of ballot box during adjournment.
SEC. 21. Preservation of order.
SEC. 22. Canvass by the judges.
SEC. 23. Mode of canvassing.
SEC. 24. Ballots and poll list to be made to agree.
SEC. 25. Votes to be counted; certificate of election; form of.
SEC. 26. Disposition of poll book.
SEC. 27. Punishment for failure or neglect to make proper disposition of boll book.
SEC. 28. Canvass by clerk of board of county commissioners; abstract and certificates to be made out; *proviso* in case of tie.
SEC. 29. Decision to be by lot when two or more county or precinct officers have an equal number of votes for the same office.
SEC. 30. Return to be made to the secretary of the territory. Votes for delegate, how canvassed.
SEC. 31. Messenger employed to procure returns.
SEC. 32. Certain persons may resign. Vacancies, how filled.
SEC. 33. If two or more counties are united, votes to be counted in senior county.
SEC. 34. Compensation of judges of election, clerks, &c.
SEC. 35. Punishment of judges, &c., for violation of election law.
SEC. 36. Term of office, when to commence.
SEC. 37. Persons having majority to be deemed elected.
SEC. 38. In counting votes, misspelling and abbreviations to be disregarded.
SEC. 39. Contests for county and precinct officers, where and how to be tried. Clerk of county commissioners to issue notice.
SEC. 40. Board of county commissioners to determine such contest.
SEC. 41. Election of county commissioner or clerk, how contested.
SEC. 42. Probate judge to determine such contest.
SEC. 43. This chapter not to be construed to impair the right of any person to contest any election in the manner otherwise provided by statute.

SEC. 1. *Be it enacted by the council and house of representatives of the territory of Washington,* That all white male inhabitants over the age of twenty-one years, who shall have resided within this territory for three months next preceding an election, shall be entitled to vote at any election for delegate to congress, and for territorial, district, county and precinct officers: *Provided,* That they shall be citizens of the United States, or shall have declared, on oath, their intentions to become such, and shall have resided three months in the territory, and fifteen days in the county where they offer to vote, next preceding the day of election: *Provided,* That nothing in this act shall be so construed as to prevent all such American half-breed Indians, as the judges of election shall determine have adopted the habits and customs of civilization, from voting.

SEC. 2. No person under guardianship, non compos mentis, or insane, nor any person convicted of treason, felony or bribery, unless restored to civil rights, shall be permitted to vote at any election.

Sec. 3. A general election shall be held in the several election precincts in this territory, on the first Monday of September in each year, at which there shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for.

Sec. 4. It shall be the duty of the county commissioners, at their regular session in April preceding the general election, to appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election at each election precinct, and said commissioners shall also set off and establish election precincts or districts when it may be necessary; and the clerk of said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff, within twenty days after the receipt of the said notices, to serve the same upon each of the said judges of the election. If in any precinct any of such judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy on the morning of the election, to serve at such election.

Sec. 5. The said judges shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers, to be held at their respective precincts, until other judges shall be appointed, as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election; and the county commissioners shall from time to time fill all vacancies which may occur in the office of judges of election, at any election precinct within their respective counties.

Sec. 6. The clerks of the several boards of county commissioners shall, at least thirty days before any general election, and at least fifteen days previous to any special election, make out and deliver to the sheriff of his county, or to a justice of the peace of any county attached for judicial purposes, three written notices thereof for each election precinct, said notices to be as nearly as circumstances will admit, as follows:—Notice is hereby given, that on the first Monday, the — day of September next, at the house of —— ———, in the town, district, or precinct of ———, in the county of ———, an election will be held for territorial, county, town, or district officers, (naming the offices to be filled, as the case may be,) which election will be opened at nine o'clock in the morning, and will continue until six o'clock in the afternoon of the same day. Dated this — day of ———, A. D. ——, (as the case may be.)

(Signed,) A. B., clerk of the board of county commissioners.

SEC. 7. The sheriff aforesaid, to whom such notices shall be delivered, as aforesaid, shall put up in three of the most public places in each town or precinct, the notices referring to such town or precinct, at least fifteen days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election; and in cases where towns and precincts may be set off by law as election precincts, said notices shall be posted as follows:—one at the house where the election is authorized to be held, and the others at two of the most public and suitable places in that vicinity or settlement.

SEC. 8. Previous to votes being taken, the judges and clerks of the elections shall severally take an oath, in the following form, to wit: I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will perform the duties of judge of the election, (or clerk, as the case may be,) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

SEC. 9. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oath to each other and to the clerk of the election, and the person administering the oaths shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

SEC. 10. At all elections to be held under this chapter, the polls shall be opened at the hour of nine o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; and upon opening the polls, one of the clerks, under the direction of the judges, shall make proclamation of the same; and thirty minutes before the closing of the polls, proclamation shall be made in like manner that the polls will be closed in half an hour; but the board may in their discretion adjourn the polls at twelve o'clock at noon, for one hour, proclamation of the same being made.

SEC. 11. It shall be the duty of the clerks of the several boards of county commissioners to furnish the sheriff with two poll books, who shall deliver the same to one of the judges of every election precinct in the county, at least five days before the time of holding any election.

SEC. 12. Every elector shall in full view, deliver to one of the judges of the election a single ballot or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill; said ballot may be open or folded, as the voter may choose.

SEC. 13. The judge to whom any ticket may be delivered, shall, upon the receipt thereof, pronounce, with an audible voice, the name of the elector; and if no objection be made to him, and the judges be satisfied that the elector is legally entitled to vote, he shall immediately put the ticket in the box, without inspecting the names thereon, if it be a folded ballot; and the clerks of the election shall enter the name of the elector and number in the poll book.

SEC. 14. It shall be lawful for any elector to vote for delegate to congress, at any place of holding an election within this territory; for members of the legislative assembly, and all other officers, at any place for holding elections within the particular limits for which such members of the legislative assembly, and such other officers, are to be elected: *Provided*, That an elector qualified to vote for a part, and not all, of the officers to be chosen at any election, shall vote an open ticket, that the judges may determine the legality of such vote.

SEC. 15. If any person offering to vote shall be challenged, as unqualified, by any judge or clerk of the election, or by any other person entitled to vote at the same poll, and either judge may challenge any person offering to vote whom he shall know or suspect not to be qualified, the judges shall declare to the person so challenged the qualification of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall then tender to him the following oath: "You do solemnly swear, (or affirm, as the case may be,) that you are qualified according to the law regulating elections in this territory, to vote for the person (or persons, as the case may be,) for whom you now propose to vote;" and if any person so challenged shall take such oath, his vote shall be received.

SEC. 16. There shall be provided and kept by the judges of each election precinct, (at the expense of the county,) a suitable ballot box, with a lock and key.

SEC. 17. There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened during the election, except in the manner and for the purpose hereinafter mentioned.

SEC. 18. At each adjournment of the polls, the clerks shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

SEC. 19. The ballot box shall then be opened and the poll books placed therein; and such box shall then be locked, and a covering with a seal placed on the opening in the lid of such box, so to entirely cover the same, and the key delivered to one of the judges and the box to another, to be designated by the board.

SEC. 20. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the poll; and the persons having the care of the box shall carefully keep it, without opening it or suffering it to be opened, or the seal thereof to be broken or removed; and shall publicly, in that condition, deliver to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll books taken out, and the box again locked.

SEC. 21. For the preservation of order, the judges are hereby authorized to enforce a fine, not exceeding ten dollars, on any person or persons who shall conduct in disorderly or riotous manner at the polls, and shall persist in such conduct after having been warned of the consequences, and on refusal to pay the same, to commit him or them to the common jail of the county, for any time not exceeding twenty-four hours, or until the fine shall be paid; and the constables, sheriffs, deputy sheriffs, and jailors, are hereby required to execute said order as though it had been issued by a magistrate in due form of law. If no constable, sheriff, or deputy be present, the judges may appoint a special constable or constables to execute their orders.

CANVASSING BY THE JUDGES.

SEC. 22. As soon as the polls of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and continue without adjournment until completed.

SEC. 23. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found or made to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the judges, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed; and if, on a comparison of the count with the poll lists, and the appearance of such ballots, a majority of the judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be rejected.

SEC. 24. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw out and destroy therefrom so many ballots, unopened, as shall be equal to such excess.

SEC. 25. The ballots and poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made as nearly as circumstances will admit, in the following form, to wit:

At an election held at the house of A. B., in the town, district, or precinct of ———, in the county of ———, and territory of Washington, on the — day of ———, A. D. ———, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit:

A. B. had ——— votes for delegate to congress;

C. D. had ——— votes for member of the legislative council;

E. F. had ——— votes for member of the house of representatives; (and in like manner for any other persons voted for.)

Certified by us, G. H., J. K., L. M., judges of election. Attest, A. B., C. D., clerks of election.

SEC. 26. The judges of election shall then enclose and seal one of the poll books under cover, directed to the clerk of the board of county commissioners of the county in which such election was held; and the packet thus sealed shall be conveyed by one of the judges or clerks of election, to be determined by lot, if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to the said clerk of the board of county commissioners, at his office, within ten days from the close of the polls; and the other poll book, together with the ballot box, deposited with one of the judges of election, to be determined by lot, if not otherwise agreed upon; and the said poll book shall be subject to the inspection of any elector, at any time thereafter, who may wish to examine the same. The returns of elections in unorganized counties shall be made to the clerk of the county to which they are attached for judicial purposes.

SEC. 27. If any person, after being deputed by the judges of election to carry the poll book of such election to the clerk of the county, shall fail or neglect to deliver such poll book to the said clerk within the time prescribed by law, safe with the seals unbroken, he shall, for every such offence, forfeit and pay the sum of five hundred dollars, for the use of the county, to be recovered by a civil action, in the name of the county commissioners, in the district court.

OF THE CANVASS BY THE CLERK OF THE BOARD OF COUNTY COMMISSIONERS.

SEC. 28. On the tenth day after the close of any election, or sooner, if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of the county, or any two county officers, shall proceed to open said returns, and make abstracts of the votes; such abstract of votes for delegate to congress shall be on one sheet; the abstract of the votes for members of the legislative assembly shall be on one sheet, and the abstract of the votes for district and territorial officers on one sheet; and the abstract of votes for county and precinct officers shall be on another sheet; and it shall be the duty of said clerk of county commissioners immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county, and precinct officers respectively, and to deliver such certificate to the person entitled to it, on his making application to the clerk at his office: *Provided*, That when a tie shall exist between two or more persons for the council or house of representatives, the clerk of the board of commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days' notice. And it shall be the duty of the clerk of the board of commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury.

SEC. 29. If the requisite number of county or precinct officers shall not be elected, by reason of two or more persons having an equal and the highest number of votes for one and the same office, the clerk, whose duty it is to compare the polls, shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes, shall be declared duly elected; and the said clerk shall make and deliver to the person thus declared duly elected, a certificate of his election, as hereinbefore provided.

SEC. 30. The clerk of the board of county commissioners, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts and transmit it by mail to the secretary of the territory at the seat of government, and it shall be the duty of the secretary of the territory with the marshal of the territory or his deputy, in presence of the governor, to proceed within thirty days, after the election, and sooner if the returns be all received, to canvass the votes given for delegate to congress; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes, the governor shall, by proclamation, order a new election.

SEC. 31. If the returns of the election of any county in this territory shall not be received at the office of the secretary of the territory, within twenty days after the election, the said secretary may forthwith send a messenger to the clerk of the board of commissioners of such county, whose duty it shall be to furnish the said messenger with a copy of such returns; and the said messenger shall be paid out of the county treasury of the said county, the sum of thirty cents for each mile he shall necessarily travel in going to and returning from said county.

SEC. 32. Any person who shall receive a certificate of his election as a member of the council, or house of representatives, of the legislative assembly, coroner or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office, and when any vacancy shall happen in the office of member of the council, or house of representatives, by death, resignation or otherwise, and a session of the legislature is to take place before the next annual election, the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county or district, to hold a special election to fill such vacancy, or vacancies, at a time appointed by the governor. If a vacancy happen in the office of sheriff, the county commissioners shall appoint some one to fill such vacancy until the next election; and when a vacancy shall happen in the office of delegate to congress from this territory it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy.

SEC. 33. When two or more counties are united in one council or representative district, or for the election of any officer, the clerk of the board of county commissioneers of the county or counties last established, shall on the twentieth day after the election, unless a previous time is agreed upon, attend at the office of the clerk of the board of the senior county, and together with him, shall canvass the votes according to law and the certificate of election shall be signed by such clerks, and be delivered to the proper persons at the office of the clerk of the senior county; and for the purposes of this act, the county first created, shall be deemed the senior county, and when all the counties were created by the same act the county first named therein, shall be deemed the senior county. *Provided,* That where a tie shall exist between two or more persons for the council or house of representatives, or district officers, in any district, it shall be the duty of the clerks of the boards of county commissioners to agree upon a day of election, and shall forthwith give notice to the sheriffs of their respective counties, who shall immediately advertise another election, giving at least ten day's notice thereof.

SEC. 34. There shall be allowed, out of the county treasury of each county, to the several judges and clerks of election, three dollars per diem, and to the person carrying the poll-books from the place of election to the clerk's-office, and to the clerks of the board of county commissioners for attending at another county to canvass votes, the sum of thirty cents per mile, for going and returning, to be paid out of the county treasury.

SEC. 35. If any judge, or clerk of election, or any other person, in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this chapter, he shall forfeit and pay to the county, a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action in the name of the county commissioners of the proper county, for the use of common schools in said county.

SEC. 36. The term of office of all officers elected, shall begin from the time of their election, unless some other express provision is made by law.

SEC. 37. In all elections, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected.

SEC 38. In counting votes, the judges of election shall disregard misspelling or abreviations of the names of candidates for office, if it can be ascertained from such votes for whom they were intended.

OF THE MANNER OF CONTESTING THE ELECTION OF COUNTY, TOWN, DISTRICT AND PRECINCT OFFICERS.

SEC. 39. All contests for county and precinct officers shall be tried in the proper county, and whenever any elector shall wish to contest such election, he shall file with the clerk of the board of commissioners of the county, within ten days after such person shall have been declared elected, a statement in writing, specifying the grounds of contest, verified by affidavit, and such clerk shall forthwith issue a notice to the board of county commissioners, to meet at the county seat, at a designated time, not less than ten nor more than twenty days thereafter, to try such contested election; and he shall issue to the contestee a notice to appear at the time and place specified in the notice to the board of county commissioners, which notice, with a copy of such statement, shall be delivered to the sheriff, who shall, within five days, serve the same on the contestee, by delivering to him a copy of such notice and statement, or by leaving such copy at his usual place of residence.

SEC. 40. The board of county commissioners shall meet at the county seat at the time specified in the notice, and if it shall appear by the sheriff's return, that notice has been duly served on the contestee, shall proceed to try such contest. Each party shall be entitled to subpœnas and subpœnas *duces tecum,* as in ordinary cases at law, and the board of county commissioners shall hear and determine such contest in such manner as shall carry into effect the expressed will of a majority of the legal voters as indicated by their votes for such office, not regarding technicalities or error in spelling the name of any candidate for such office. And the clerk of said board shall issue a certificate to the person declared to be elected by said board, which shall be conclusive evidence of the right of said person to hold said office.

SEC. 41. Whenever the election of any county commissioner, or clerk of the board of county commissioners shall be contested, a statement in writing specifying the grounds of contest, verified by affidavit, shall be filed with the probate judge of the proper county, who shall thereupon designate a time, not less than ten, nor more than twenty days thereafter, for the trial of such contest at the county seat, and forthwith issue a notice to the contestee to appear at the time and place specified in the notice, which notice, with a copy of such statement, shall be delivered to the sheriff, who shall, within five days, serve the same upon the contestee, by delivering to him a copy of such notice and statement, or by leaving the same at his usual place of residence.

SEC. 42. If it shall appear to the probate judge at the time appointed, by the sheriff's return, that notice has been duly served on the contestee, he shall proceed to try such contest. Each party shall be entitled to subpœnas and subpœnas *duces tecum,* as in ordinary cases at law; such judge shall hear and determine such contest as provided in elections contested before the board of county commissioners, and shall issue a certificate to the person declared duly elected, which certificate shall be conclusive evidence of the right of such person to hold such office.

SEC. 43. This chapter shall not be construed so as to impair in any way the right of any person to contest any election in the manner otherwise provided by statute.

CHAPTER II.

OF RESIGNATIONS, VACANCIES AND REMOVALS, AND SUPPLYING VACANCIES.

SEC. 1. Resignations, how made.

2. Vacancies, how they shall occur.
3. Governor to declare certain offices vacant.
4. Governor to supply certain vacancies.
5. Vacancy in county or precinct officers—county commissioners to appoint.
6. Persons supplying vacancies to qualify in the same manner as their predecessors.
7. Act when to take effect.

SEC. 1. Resignations shall be made as follows:

1. By the territorial officers and by all officers elected by the legislature, to the governor;

2. By all county officers, to the county commissioners in their respective counties;

3. By all other officers holding their offices by appointment, to the body, board or officer that appointed them.

VACANCIES.

SEC. 2. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office:

1. The death of the incumbent;

2. His resignation;

3. His removal;

4. His ceasing to be an inhabitant of the district, county, town, or village for which he shall have been elected or appointed, or within which the duties of his office are to be discharged;

5. His conviction of any infamous crime, or of any offence involving a violation of his official oath;

6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law;

7. The decision of a competent tribunal declaring void his election or appointment.

SEC. 3. The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

SUPPLYING VACANCIES.

SEC. 4. Whenever a vacancy shall occur during the recess of the legislature in any office which the legislature are authorized to fill by election, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

SEC. 5. When at any time there shall be in either of the county or precinct offices, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county commissioners to perform the duties of either of said offices: *Provided*, That in case there is no board of county commissioners, the governor may, on notice of such vacancy, create or fill such board.

SEC. 6. Every such person so appointed, in pursuance of either of the last two preceding sections, shall before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officers in whose place they shall be appointed; and they shall continue to exercise and perform the duties of the office to which they shall be so appointed, until such vacancy shall be regularly supplied as provided by law.

SEC. 7. This act shall be in force and take effect from its passage.

AN ACT RELATIVE TO CRIMES AND PUNISHMENTS, AND PROCEEDINGS IN CRIMINAL CASES.

I. *Of the rights of persons accused of crimes and offenses.*
II. *Of offenses against the lives and persons of individuals.*
III. *Of offenses against property.*
IV. *Of offenses against public peace.*
V. *Of offenses against public justice, and by and against public officers.*
VI. *Of offenses against public policy.*
VII. *Of offenses against morality and decency.*
VII. *Of offenses against public health.*
IX. *Of principals and accesories.*
X. *General provisions relative to crimes and punishments.*

I. OF THE RIGHTS OF PERSONS WHO ARE ACCUSED OF CRIMES AND OFFENSES.

SEC. 1. No person to be tried unless indicted, except before a justice of the peace or court martial.
2. Rights of the accused on trial, to face witnesses, &c.
3. No person to be convicted except by jury or on confession.
4. No person to be tried the second time for the same offense.
5. When a second trial for the same offense may be had.
6. Punishment shall not be inflicted without conviction.
7. Provisions for a speedy trial; when prisoner may be discharged.
8. All offenses bailable, except murder.
9. No person to be tried for an offense unless prescribed by statue.
10. Limitation of prosecutions. Proviso.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That no person shall be held to answer in any court for an alleged crime or offense unless upon indictment by a grand jury, except in proceedings before a justice of the peace, or before court martial.

SEC. 2. On the trial of any indictment, the party accused, shall have the right to be heard by himself or counsel, to meet the witnesses produced against him face to face, and he shall have the right to produce witnesses and proofs in his favor, and have compulsory process to compel the attendance of witnesses in his behalf, and to a speedy, public trial by an impartial jury.

SEC. 3. No person indicted for an offense, shall be convicted thereof unless by confession of his guilt in open court, or by the verdict of a jury accepted and recorded in open court.

SEC. 4. No person shall be held to answer on a second indictment for an offense of which he has been acquitted by a jury upon the facts and merits on a former trial, but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offense, notwithstanding any defect in the former, or in the substance of the indictment on which he was acquitted.

SEC. 5. If any person indicted for an offense, shall, on his trial, be acquitted upon the ground of a variance between the indictment and the proof, or upon any exception to the form, or to the substance of the indictment, he may be arraigned on a new indictment, and may be tried and convicted for the same offense, notwithstanding such former acquittal, except where such former charge was a capital offense.

SEC. 6.. No person charged with any offense against the law, shall be punished for such offense, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case, and of the person.

SEC. 7. Every person held in prison on indictment, shall, if he require it, be tried at the next term of the court after the time he was imprisoned, or shall be bailed on his own recognizance, and every person held in prison on any charge of having committed an offense shall be discharged, if he be not indicted before the end of the first term of the court at which he is held to answer, unless it shall appear to the satisfaction of the court that the witnesses on the part of the territory have been enticed or kept away, or are detained and prevented from attending the court hy sickness or some inevitable accident.

SEC. 8. Every person charged with an offense except that of murder in the first degree where the proof is evident, or the presumption great, may be bailed by sufficient sureties, and bail shall justify and have the same rights as in civil cases, except as otherwise provided in this act.

Sec. 9. No person shall be held liable to answer criminally for any offense, unless prescribed by statute.

Sec. 10. Prosecutions for the offenses of murder and arson where death ensues, may be commenced at any period after the commission of the offense, or offenses, the punishment of which may be by imprisonment in the penitentiary, within three years after their commission, and for all other offenses within one year after their commission: *Provided*, That any length of time during which the party charged, was not usually and publicly resident within the territory, shall not be reckoned within the one and three years respectively; and further provided, that where a person has been indicted within the period during which the indictment might be found, if the indictment be quashed, the time of limitation shall be computed from the quashing of such indictment.

II. OF OFFENSES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

Sec. 11. Felony defined; what are misdemeanors.
12. Murder defined.
Pardoning power not prevented.
13. Murder in the second degree defined.
Punishment.
14. The survivor in a duel guilty of murder in the second degree.
15. Duels fought without the territory, deemed within when the appointment is so made.
16. Manslaughter defined.
17. Assisting self-murder deemed manslaughter.
18. Endangering the lives of passengers on vessels deemed manslaughter.
19. When captain, engineer, or other person on a steamboat deemed guilty of manslaughter.
20. Second in a duel guilty of manslaughter.
21. Punishment for manslaughter.
22. Punishment for engaging in a duel.
23. Punishment for carrying or accepting a challenge; being present at, encouraging, or promoting a duel.
24. Punishment for giving poison when not fatal.
25. Punishment for poisoning food, drink, spring or well.
26. Malicious mayhem and punishment therefor.
27. Assault and battery with malicious intent.
Punishment therefor.
28. Punishment for assault and battery when the offender has a pistol.
29. Assault and battery.
Punishment therefor.
30. Punishment for exhibiting a dangerous weapon.
31. Punishment for attempting to commit murder not by assault and battery.
32. Simple mayhem.
Punishment therefor.
33. Rape; punishment therefor.
Evidence of the crime.
34. Robbery.
Punishment therefor.

35. Kidnapping.
    Punishment therefor.
36. Offenses mentioned in the preceding section may be tried where the offender is taken.
    When the consent of the person taken shall be considered a defense.
37. Punishment for destroying a child in the womb or at its birth.
38. Punishment for causing a miscarriage.
39. Extortion of money &c., punished.

Sec. 11. All offenses which may be punishable by imprisonment in the penitentiary, are felonies; and all other offenses are misdemeanors.

Sec. 12. Every person who shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate, any rape, arson, robbery or burglary, or by administering poison, or causing the same to be done, kill another, every such person shall be deemed guilty of murder in the first degree, and upon conviction thereof shall suffer death. But this shall in no case prevent the exercise of the pardoning power of the governor, or the authority to commute the punishment from that of death to imprisonment for life.

Sec. 13. Every person who shall purposely and maliciously, but without deliberation and premeditation, kill another, every such person shall be deemed guilty of murder in the second degree, and upon conviction thereof, shall be imprisoned in the penitentiary, for a term of not less than ten, nor more than twenty years, and kept at hard labor.

Sec. 14. If either party to a duel be killed, the survivor shall be deemed guilty of murder in the second degeee.

Sec 15. If any person shall by previous appointment made within, fight a duel without this territory, and in so doing shall inflict a mortal wound upon any person, whereof the person so injured, shall die, such person so offending shall be deemed guilty of murder in the second degree, within any county in this territory.

Sec. 16. Every person who shall unlawfully kill any human being without malice express or implied, either voluntarily upon a sudden heat, or involuntarily, but in the commission of some unlawful act, such person shall be deemed guilty of manslaughter.

Sec. 17. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter.

Sec. 18. Any person navigating any boat or vessel for gain, who shall wilfully or negligently receive so many passengers, or such a quantity of other lading, that, by means thereof, such boat or vessel shall sink or overset, and thereby any human being shall be drowned or otherwise killed, shall be deemed guilty of manslaughter.

Sec. 19. If the captain, or any other person having charge of any steamboat used for the conveyance of passengers, or if the engineer or other person having charge of the boiler of such boat, or of any other apparatus for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create, or allow to be created, such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any person shall be killed, every such captain, engineer, or other person, shall be deemed guilty of manslaughter.

SEC. 20. Any person who shall be present at a duel as a second, when either party thereto shall be killed, or a mortal wound inflicted, and whereof death shall ensue, shall be deemed guilty of manslaughter.

SEC. 21. Any person convicted of manslaughter shall be punished by imprisonment in the penitentiary, not less than one year, nor more than twenty years, and shall be fined in any sum not exceeding five thousand dollars.

SEC. 22. Every person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight a duel, or shall send or deliver any written or verbal message, purporting or intending to be such challenge, although no duel ensue, shall be imprisoned, on conviction thereof, in the penitentiary, not more than ten years, nor less than one year.

SEC. 23. Every person who shall accept such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel ensue or not, and every person who shall be present at the fighting of a duel with deadly weapons, as an aid, or second, or who shall advise, encourage, or promote such duel, shall on conviction thereof, be imprisoned in the penitentiary, not more than five years, nor less than six months.

SEC. 24. Every person who shall administer, or procure to be administered, any poison to any other human being, with intent to kill the person to whom the same shall be administered, if death do not ensue, upon conviction thereof, shall be imprisoned in the penitentiary not more than twenty years, nor less than two years.

SEC. 25. Every person who shall mingle poison with any food, drink, or medicine, with intent to injure any human being, or who shall poison any spring, well, or reservoir of water, with such intent, shall, upon conviction thereof, be imprisoned in the penitentiary not more than fourteen years, nor less than one year.

SEC. 26. Every person who on purpose, and of malice aforethought, shall unlawfully disable the tongue, put out an eye, cut or bite off the nose, ear, lip, or other member of any person, with intent to disfigure or disable such person, shall be deemed guilty of malicious mayhem, and upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years, nor less than one year, and be fined in any sum not exceeding one thousand dollars.

SEC. 27. Every person who shall perpetrate, or attempt to perpetrate, an assault, or an assault and battery, with intent to commit murder, manslaughter, mayhem, rape, robbery, burglary, or kidnapping, shall, on conviction thereof, be imprisoned in the penitentiary not more than fourteen years, nor less than one year ; or be imprisoned in the county jail not more than one year, or less than six months, and be fined in any sum not exceeding one thousand dollars.

SEC. 28. Every person who shall assault and beat another with a cowhide or whip, having with him at the time a pistol, or other deadly weapon, shall on conviction thereof, be imprisoned in the county jail not more than one year, nor less than three months, and be fined in any sum not exceeding one thousand dollars.

SEC. 29. Every person who in a rude, insolent, and angry manner, shall unlawfully touch, strike, beat, or wound another, shall be deemed guilty of an assault and battery, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment not exceeding six months in the county jail.

SEC. 30. Every person who shall, in a rude, angry, or threatening manner, in a crowd of two or more persons, exhibit any pistol, bowie knife, or other dangerous weapon, shall on conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars.

SEC. 31. Every person who shall attempt to commit the crime of murder by drowning or strangling another person, or by any means not constituting an assault with intent to commit murder, shall on conviction thereof, be imprisoned in the penitentiary not more than ten years, nor less than one year.

SEC. 32. Every person who shall violently and unlawfully deprive another of the use of any bodily member, or who shall unlawfully and wilfully, disable the tongue or eye, or bite the nose, ear or lip, of another, shall be deemed guilty of simple mayhem, and on conviction thereof, shall be imprisoned in the county jail not more than one year, nor less than one month, and be fined in any sum not exceeding two thousand dollars, or fined only.

SEC. 33. Every person who shall unlawfully have carnal knowledge of a woman against her will, or of a female child under twelve years of age, shall be deemed guilty of a rape, and upon conviction thereof, shall be imprisoned in the penitentiary not more than thirty years, nor less than one year, and in prosecutions for such offence, proof of penetration shall be sufficient evidence of the commission thereof.

SEC. 34. Every person who shall forcibly and feloniously take from the person of another, any article of value, by violence or putting in fear, shall be deemed guilty of robbery, and upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years, nor less than two years, and be fined in any sum not exceeding one thousand dollars.

SEC. 35. Every person who shall steal and take, or forcibly and unlawfully arrest any person, and convey such person to parts without the territory of Washington, or aid, or abet therein, or who shall forcibly and unlawfully, take or assist, or aid, or abet, in forcibly and unlawfully taking or arresting any person, with intent to take such person to parts without said territory, without having first established a claim upon the services of such person, according to the laws of this territory, or of the United States, shall be deemed guilty of kidnapping, and upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years, nor less than one year, and be fined not more than five thousand dollars, nor less than one hundred dollars.

SEC. 36. Every offense mentioned in the preceding section may be tried either in the county in which the same may have been committed, or in any county in, or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be so sold or transferred, shall have been taken, confined, held, carried or brought; and upon the trial of any such offense, the consent thereto of the person so taken, inveigled, kidnapped or confined, shall not be a defense, unless it shall be made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or by threats.

SEC. 37. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child or of such mother be thereby produced, on conviction thereof, be imprisoned in the penitentiary not more than twenty years, nor less than one year.

SEC. 38. Every person who shall administer to any pregnant woman, or to any woman who he supposes to be pregnant, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall on conviction thereof, be imprisoned in the penitentiary not more than five years, nor less than one year, or be imprisoned in the county jail not more than twelve months, nor less than one month, and be fined in any sum not exceeding one thousand dollars.

SEC. 39. If any person, either verbally or by any written, or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or to control the person so threatened, to do any act against his will, he shall upon conviction thereof, be imprisoned in the county jail not more than one year, nor less than one month, or be fined in any sum not exceeding five hundred dollars, nor less than one hundred dollars.

III. OF OFFENCES AGAINST PROPERTY.

Sec. 40. Arson; punishment therefor; when it is murder.
41. Malicious burning of property; punishment for.
42. Punishment for burning one's own property when damage ensues to another; when it is murder.
43. Three preceding sections shall exteend to married women.
44. Burglary; punishment for.
45. Grand larceny; punishment therefor.
46. Petit larceny; punishment therefor.
47. What shall be considered personal property.
48. Punishment for false marking, branding or altering, &c., another's animal, with intent to steal.
49. Punishment for buying or receiving stolen goods.
50. In prosecutions for receiving stolen goods, it is not necessary to prove the party stealing has been convicted.
51. Stolen property must be returned to the owner; duty of the officer making arrest.
52. Recompense to the prosecutor and officer in a suit for larceny, &c.
53. When receiving property under false pretenses, is considered larceny; punishment therefor.
54. Obtaining money or goods under false pretense; punishment therefor.
55. When embezzlement is deemed larceny; punishment therefor.
56. Punishment for making false receipts, &c.
57. Forgery defined; punishment therefor.
58. Counterfeiting defined; punishment therefor.
59. Where intent to defraud constitutes the offenses, it is not necessary to name in the indictment, the person.
60. Forcible entry and detainer defined; fine therefor.
61. Malicious trespess; fine therefor.
62. Altering boundary; punishment therefor.
63. Burning woods, wilfully or negligently, punished.

Sec. 40. Every person who shall wilfully and maliciously set fire to the dwelling house, barn, stable, out house, ship, steamboat, or other vessel or any water craft, mill, milk house, banking house, distillery, manufactory, mechanic's or artificer's shop, store house, building, or room occupied as a shop or an office for professional business, or printing office of another, any public bridge, court house, jail, market house, seminary or college edifice, or building thereto belonging, or other public buildings of the value of five dollars, shall be deemed guilty of arson, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than ten years, nor less than one year, or in the county jail not more than six months, nor less than one month, and be fined in any sum not exceeding one thousand dollars; and should the death of any person ensue therefrom, known to be occupying or present on said premises, at the time such premises are wilfully set fire to, the offender, on conviction thereof, shall be deemed guilty of murder in the first degree.

SEC. 41. Every person who shall wilfully and maliciously set fire to any pile or parcel of boards, timber, piles, or other lumber, cord wood, ricks, stacks, or shocks of grain, hay, or other vegetable products, or vegetable products severed from the soil, not in ricks, stalks, or shocks, or any standing grass, or grain, or other cultivated vegetable product of the soil, shall, upon conviction thereof, be imprisoned in the county jail not more than one year, nor less than one month, and be fined in any sum not exceeding five hundeed dollars.

SEC. 42. Every person who shall wilfully and maliciously set fire to the dwelling house, or any building owned by himself, whereby the dwelling house or building of another shall be burnt or injured by fire, shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years, nor less than one year, or be imprisoned in the county jail not more than six years, nor less than six months, and fined in any sum not exceeding one thousand dollars; and should the life of any person be thereby lost, such offender shall be deemed guilty of murder in the second degree, and be imprisoned in the penitentiary during life.

SEC. 43. The three preceding sections shall severally extend to a married woman who may commit either of the offenses therein described, though the property set fire to may belong partly or wholly to her husband.

SEC. 44. Every person who shall enter in the night time, or shall break or enter in the day time, any dwelling house or outhouse thereto adjoining, and occupied therewith, or any office, shop, store, or warehouse, or any ship, steamboat or vessel, within the body of any county, with intent to commit a felony, upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years, nor less than one year.

SEC. 45. Every person who shall feloniously steal, take, and carry, lead or drive away the personal goods or property of another, of the value of thirty dollars or more, shall be deemed guilty of grand larceny, and upon conviction thereof, shall be imprisoned in the penitentiary not more than fourteen years, nor less than one year.

SEC. 46. Every person who shall feloniously steal, take, and carry, lead or drive away, the personal goods or property of another under the value of thirty dollars, shall be deemed guilty of petit larceny, and upon conviction thereof, shall be imprisoned in the county jail not more than two years, nor less than one month.

SEC. 47. Bonds, promissory notes, bills of exchange, or other bills, orders, drafts, checks, or certificates, or warrants for or concerning money, goods or property due or to become due, or to be delivered; and any deed or writing containing a conveyance of land or any valuable contract in force, or receipt, release, or defeasance, writ, process or public record, or any other instrument whatever, shall be considered as personal goods of which larceny may be committed.

SEC. 48. Every person who shall mark or brand, or alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goat, hog, shoat, or pig, not his own property, but belonging to some other person, or cause the same to be done with intent thereby to steal the same, or to prevent the identification thereof by the true owner shall, on conviction thereof, be imprisoned in the penitentiary not more than five years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

SEC. 49. Every person who shall buy, receive or aid in the concealment of stolen property, money or goods, knowing the same to have been stolen, shall, upon conviction thereof, be imprisoned in the penitentiary not more than four years, nor less than one year, or imprisoned in the county jail not more than two years nor less than one month, and be fined not exceeding five hundred dollars, nor less than one hundred dollars.

SEC. 50. In any prosecution for the offense of buying, receiving, or aiding in the concealment of stolen money or other property known to have been stolen, it shall not be necessary to aver, nor on the trial thereof, to prove that the person who stole such property, has been convicted.

SEC. 51. All property obtained by larceny, robbery or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny to secure the property alleged to have been stolen, and he shall be answerable for the same; and shall annex a schedule thereof to his return of the warrant.

SEC. 52. Upon any conviction of burglary, robbery or larceny, the court may order a suitable recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer.

SEC. 53. Every person who shall falsely represent or personate another, and in such assumed character, shall receive any money or other property whatever intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed guilty of larceny, and shall, on conviction thereof, be imprisoned in the penitentiary not more than fourteen years nor less than one year, or imprisoned in the county jail for any length of time not exceeding one year.

SEC. 54. If any person, with intent to defraud another, shall designedly by color of any false token or writing, or any false pretense, obtain from any person any money, transfer, note bond or receipt, or thing of value, such person, shall, upon conviction thereof, be imprisoned in the penitentiary not more than five nor less than one year, or imprisoned in the county jail for any length of time not exceeding one year.

SEC. 55. If any officer, agent, clerk, or servant, or person to whom any money or other property shall be entrusted for any specific purpose for hire, shall embezzle, or fraudulently convert to his own use, or shall take or secrete with intent to embezzle and fraudulently convert to his own use, any money or other property which shall have come into his possession, or shall be under his care or charge by virtue of such employment, or for such specific purpose, shall be deemed guilty of larceny, and, on conviction thereof, be imprisoned in the penitentiary not more than ten years nor less than one year, or be imprisoned in the county jail for any length of time not exceeding one year.

SEC. 56. If any warehouse-man, miller, or storage, forwarding, or commission merchant, or his or their servants, agents, or clerks, shall wilfully and fraudulently make, or alter any receipt or other written evidence of the delivery into any warehouse, mill, store, or other building belonging to him, them, or either of them, or his or their employers, of any grain, flour, pork, beef, or wool, or other goods, wares, or merchandize, which shall not have been so received or delivered into such mill, warehouse, store, or other building, previous to the making and altering such receipt or other written evidence thereof, upon conviction thereof, shall be imprisoned in the penitentiary not more than two years, nor less than six months, or imprisoned in the county jail for any length of time not exceeding one year, and fined in any sum not exceeding one thousand dollars.

SEC. 57. Every person who shall falsely make, or assist to make, deface, destroy, alter, forge, or counterfeit, or cause to be falsely made, defaced, destroyed, altered, forged, or counterfeited, any record, deed, will, codicil, bond, writing obligatory, or property, receipt for money or property, power of attorney, certificate of a justice of the peace, or other public officer, auditor's warrant, treasury note, county order, acceptance or indorsement of any bill of exchange, promissory note, draft, or order, or assignment of any bond, writing obligatory, or promissory note for money or property, or any other instrument in writing, or any brand prescribed by law on a tobacco, beef, bacon, or pork cask, lard keg or barrel, salt barrel or hay bale, or any person who shall utter or publish as true any such instrument, knowing the same to be false, defaced, altered, forged, or counterfeited, with intent to defraud any person, body politic or corporate, shall be deemed guilty of forgery, and on conviction thereof shall be imprisoned in the penitentiary not more than fourteen years nor less than one year, and be fined in any sum not exceeding five thousand dollars.

SEC. 58. Every person who shall cast, stamp, engrave, make, or mend, or shall knowingly have in his possession any mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin, current by law or usage in this territory, with intent to use the same, or cause or permit the same to be used or employed in coining or making any such false or counterfeit coin as aforesaid, shall, on conviction thereof be imprisoned in the penitentiary not more than ten years, nor less than one year, and be fined in any sum not exceeding five thousand dollars, and all such tools and instruments, intended for such purposes aforesaid, shall be destroyed.

SEC. 59. In any case where the intent to defraud is necessary to constitute the offense of forgery, or any other offense that may be prosecuted, it shall be sufficient to allege in the indictment, an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment, it shall be deemed sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, territory, county, city, town or village, or any body corporate, or any public officer in his official capacity, or any co-partnership or member thereof, or any particular person, and persons of skill shall be competent witnesses to prove a forgery.

SEC. 60. Every person who shall violently take or keep possession of any house, or close with menaces, force and arms, and without the authority of law, shall be deemed guilty of forcible entry or forcible detainer, as the case may be, and upon conviction thereof shall be fined in any sum not exceeding one thousand dollars.

SEC. 61. Every person who shall maliciously or mischievously injure or destroy, or cause to be injured or destroyed any property of another, or any public property, shall be deemed guilty of a malicious trespass, and on conviction thereof be fined not exceeding three fold the value of the damage done, to which may be added imprisonment in the county jail not exceeding one year.

SEC. 62. Every person who shall wilfully or maliciously remove any monuments of stone, wood or other durable material, lawfully erected for the purpose of designating the corner or any other point in the boundary of any lot or tract of land, or any post or stake lawfully fixed or driven in the ground for the purpose of designating a point in the boundary of any lot or tract of land, or alter the marks upon any tree, post, or other monument lawfully made for the purpose of designating any point, course, or line in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction thereof, be imprisoned in the county jail not more than one year, and be fined in any sum not exceeding one thousand dollars, or be fined only.

SEC. 63. Every person who shall wilfully and maliciously set on fire, or cause to be set on fire any woods, prairie, or other grounds, other than his own, or shall intentionally or by gross neglect, permit the fire to pass his own premises or grounds, to the injury of any other person or persons, shall, on conviction thereof, for every such offence, be fined in any sum not exceeding five hundred dollars.

IV. OF OFFENSES AGAINST PUBLIC PEACE.

SEC. 64. Riot, punishment for.
65. Duty of officers with reference to riots.
66. Punishment of a person for disobeying or hindering an officer.
67. Disturbing public worship, punishment for.
68. Affray, punishment for.

SEC. 64. If three or more persons shall do an act in a violent and tumultuous manner, they shall be deemed guilty of a riot, and upon conviction thereof shall be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars, or be fined only.

SEC. 65. If three or more persons shall be unlawfully, riotously, or tumultuously assembled, any justice of the peace, sheriff, deputy sheriff, constable, or marshal of a city, or mayor or alderman thereof, shall go among the persons so assembled, or as near to them as possible, and shall command them in the name of the territory of Washington, immediately to disperse. If the persons so assembled do not immediately disperse, it shall be lawful for every such officer to command sufficient aid, and to seize, arrest, and secure in custody all such persons; and if necessary, an armed force may be called out, and shall obey the orders of any two of the magistrates or officers mentioned in this section, and if any such persons shall be killed or wounded by reason of their resisting, the persons endeavoring to disperse or seize them, the magistrate or officers, shall be held guiltless.

SEC. 66. All persons who shall have been commanded peaceably to disperse, shall refuse so to disperse, or shall willfully obstruct or hinder such officer, who shall declare himself as such, from commanding them to disperse, shall on conviction be imprisoned in the county jail not more than one year, and be fined in any sum not exceeding two hundred dollars, or fined only.

SEC. 67. Every person who shall disturb any religious society, or any member thereof, when met or meeting together for public worship, or shall sell or give away any spirituous liquor at any booth, wagon, shed, or open

place, or at any boat, canoe, or other watercraft, or in any building temporarily erected for the purpose of selling therein such liquors, within one mile of any collection of a portion of the citizens of this territory, convened for the purpose of worship, or shall disturb any collection of the people convened for any lawful purpose, such persons shall, on conviction thereof, be imprisoned in the county jail not exceeding one month, and be fined in any sum not exceeding two hundred dollars, or fined only.

Sec. 68. If two or more persons by agreement fight in any public place, the persons so offending shall be deemed guilty of an affray, and upon conviction thereof shall be imprisoned in the county jail not more than six months, and be fined in any sum not exceeding three hundred dollars, or be fined only.

V. OF OFFENCES AGAINST PUBLIC JUSTICE, AND BY AND AGAINST PUBLIC OFFICERS.

Sec. 69. Perjury, official.
70. Perjury, individual.
71. Subornation of perjury.
72. Punishment for perjury, or subornation of.
73. Official bribery, punishment for.
74. Malfeasance in office, punishment for.
75. Person bribing, or offering a bribe, to be punished.
76. Rescuing, aiding, or assisting in rescuing prisoners; punishment for.
77. Jailor or other officer permitting prisoner to escape voluntarily, punishment for.
78. Jailor or other officrs through negligence permitting a prisoner to-escape.
79. Hinderance or disobedience of any legal process, fine for.
80. Punishment for refusal of officers to serve any process.
81. Inhumanity to prisoners, punishment for.
82. Officer failing to perform his duties to be fined.
83. Officer refusing or neglecting to pay over funds, to be fined.
84. Auditor issuing a warrant unauthorized to be fined.
85. Officiating where unauthorized, to be fined.
86. Officer performing duties before taking the oath, or giving the bond, to be fined.
87. Receiving unlawful fees, punishment for.

Sec. 69. Every person who, having taken a lawful oath or affirmation, in any matter in which by law an oath or affirmation may be required, shall upon such oath or affirmation swear or affirm wilfully, corruptly, and falsely, touching a matter material to the point in question, shall be deemed guilty of perjury.

Sec. 70. Every person who shall wilfully, corruptly, and falsely swear before any officer authorized to administer oaths, under oath or affirmation voluntarily make any false certificate, affidavit, or statement of any nature, for any purpose, shall be deemed guilty of perjury.

SEC. 71. Every person who shall suborn or procure any person to commit perjury, he shall be deemed guilty of subornation of perjury.

SEC. 72. Every person duly convicted of perjury, or of subornation of perjury, shall be imprisoned in the penitentiary not more than twenty years, nor less than one year, and be fined in any sum not exceeding one thousand dollars.

SEC. 73. If any judge, justice of the peace, juror, commissioner, auditor, referee, arbitrator, or person summoned as a juror, shall accept, receive, or agree for in any way, any bribe, present, or reward to him offered, for the purpose of obtaining or influencing his opinion, judgment, verdict, sentence, report or award, in any matter or cause depending, or to be tried before him alone, or before him with others, he shall, on conviction thereof, be imprisoned in the penitentiary not more than seven years, nor less than one year, or be imprisoned in the county jail not more than one year, nor less than one month, and be fined in any sum not exceeding one thousand dollars.

SEC. 74. If any executive, judicial, or ministerial officer, or member of the legislative assembly, shall accept or receive, or agree to accept or receive, in any way, any bribe, present, or reward to him offered, for the purpose of inducing or influencing such officer to appoint any person to office, to give any vote, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or voted or exercised any power in him vested, or performed any duty of him required with partiality or favor, or otherwise, contrary to law, he shall, on conviction thereof, be imprisoned in the penitentiary not more than ten years, nor less than one year, or in the county jail not more than one year, nor less than three months, and be fined in any sum not exceeding five thousand dollars.

SEC. 75. Every person who shall bribe, or offer or attempt to bribe, any of the officers mentioned in the two preceding sections, shall, on conviction thereof, be imprisoned in the county jail any length of time not exceeding one year, and be fined in any sum not exceeding two thousand dollars, or fined only.

SEC. 76. Every person who shall convey into any penitentiary, jail, house of correction, or house of reformation, any disguise, or any instrument, tool, weapon or other thing, adapted to, or useful, in aiding any prisoner there, lawfully committed or detained, to make escape, or shall by any means whatever aid or assist, any such prisoner in his endeavor to escape therefrom, whether such escape be attempted or effected or not, and every person who shall aid or assist any prisoner in escaping, or in attempting to escape from any officer or person who shall have the lawful custody of such prisoner, or who shall, forcibly rescue any prisoner from lawful custody of such persons, shall on conviction thereof be imprisoned in the penitentiary not more than four years, nor less than one year, or imprisoned in the county jail any length of time not exceeding one year, and be fined in any sum not exceeding five hundred dollars.

SEC. 77. If any jailor or other officer shall voluntarily suffer any prisoner in his custody, charged with or convicted of any criminal offence, to escape, he shall suffer, unless the prisoner so charged with or convicted of any capital offence, the like punishment and penalties as the prisoner so suffered to escape, was sentenced to, or would be liable to suffer upon conviction for the crime or offence wherewith he stood charged, and if the prisoner was charged with or convicted of a capital offence, he shall be imprisoned in the penitentiary not more than twenty years, nor less than five years.

SEC. 78. If any jailor or other officer shall through negligence suffer any prisoner in his custody, upon conviction or upon any criminal charge, to escape, or shall wilfully refuse to receive into his custody any prisoner lawfully committed thereto, on any criminal charge or conviction, or on any lawful process whatever, he shall, on conviction thereof, be imprisoned in the county jail not more than two years, and be fined not more than five hundred, nor less than one hundred dollars, or fined only.

SEC. 79. Every person who shall obstruct the execution of any legal process, or who, on being required by any marshal, sheriff, or their deputies, or by any coroner, constable, or any conservator of the peace, to assist him in the execution of his office, or in the service of any process, shall fail to obey, without a valid cause for not obeying, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 80. If any officer authorized to serve process, shall wilfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person charged with or convicted of an offence, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall, on conviction thereof, be imprisoned in the county jail, not more than one year, or be fined not exceeding three hundred, nor less than fifty dollars.

SEC. 81. If any sheriff, jailor, or other officer, shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, he shall, on conviction thereof, be imprisoned in the county jail not more than one year, nor less than one day, and be fined in any sum not exceeding one thousand dollars.

SEC. 82. If any officer shall willfully fail to perform any duty, within the time and in the manner prescribed by law, or shall do any act which he shall be specially prohibited from doing by law, he shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment in the county jail, for any length of time not exceeding six months.

Sec. 83. If any officer or person required by law to collect, disburse, receive, or keep any public money, shall willfully neglect or refuse to pay over such money, at the time prescribed by law, or shall willfully refuse to pay any warrant lawfully drawn, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year, nor less than one month, or be fined in any sum not exceeding five thousand dollars.

Sec. 84. If any auditor shall knowingly issue any warrant not authorized by law, he shall, upon conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding one thousand dollars, or be fined only.

Sec. 85. Every person who shall officiate in any place of authority, without being legally authorized, shall be deemed guilty of usurpation, and upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Sec. 86. If any person elected or appointed to an office, or his deputy, shall perform any of the duties of such office, without having taken an oath as prescribed by law, or before having given and filed the bond required of him, and in the manner prescribed by law, he shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Sec. 87. If any officer, whose fees are stated by law, shall corruptly exact or extort any greater fees for any services than by law are stated and allowed, or shall levy, demand, receive, or take under color of his office, any bond, bill, or note, or other assurance or promise whatever, securing the payment of a greater sum of money for any service than he is by law authorized to demand and receive, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding one thousand dollars.

VI. OF OFFENSES AGAINST PUBLIC POLICY.

Sec. 88. Nuisance, fine for keeping.
89. Malicious prosecution, punishment for.
90. Violation of license laws, punishment for.
91. Barrator, who is a, and punishment for.
92. Fraudulent voting, fine for.
93. Voting or attempting to vote twice, punishment for.
94. Fine for judge or clerk of an election interfering in.
95. Fine for casting an illegal vote knowingly.
96. Fine for attempting to discover the names on a ticket.
97. Bribing voters, fine and punishment for.
98. Lottery tickets, fine for selling.
99. Gaming, fine for.

100. Gaming table, fine of any person for suffering one to be kept on his premises.
101. Violation of the estray law, or converting estrays to ones own use, fine for.
102. Fine for obstructing a road, bridge, or highway.
103. Fine for discharging ballast in shoal water.
104. Fine for obstructing navigation. *Proviso.*
105. Fine for discounting county or territorial orders by an officer.
106. Fine for non-performance of duty as supervisor of a road.
107. Fine for practicing fraud in the draft of a jury.
108. Punishment for receiving unlawful toll on ferry or bridge.
109. Fine for marrying a couple unlawfully.
110. Fine for failing to return certificate of marriage.
111. Fine for performing marriage ceremony unlawfully.
112. Fine and punishment for concealing or attempting to conceal crime.

SEC. 88. Every person who shall erect, or continue and maintain any public nuisance, to the injury of any part of the citizens of this territory, shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 89. If any person shall maliciously, without probable cause, attempt to cause an indictment to be found, or other prosecution, for any crime or misdemeanor, to be commenced against any person, or if two or more persons shall conspire together for that purpose, the person so sought to be indicted or otherwise prosecuted being innocent, such person or persons, so offending, shall, on conviction thereof, be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceeding one thousand dollars.

SEC. 90. Every person who shall, by himself or agent, transact any business, or do any act, without a license therefor, where such license is required by any law in this territory, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, and in all such cases where the principal is prosecuted, his agent may be compelled to testify, and when the agent is prosecuted, the principal may be compelled to testify.

SEC. 91. Every person who shall excite quarrels or lawsuits among the citizens of this territory, shall be deemed a common barrator, and, upon conviction thereof, shall be imprisoned in the county jail, any length of time not exceeding six months, and be fined in any sum not exceeding five hundred dollars, or fined only.

SEC. 92. If any person shall fraudulently cause, or attempt to cause, any elector at any election held pursuant to law in this territory, to vote for a person different from the one he intended to vote for, such person, so offending, shall be fined not more than one hundred, nor less than ten dollars.

SEC. 93. If any elector shall vote or attempt to vote more than once at any election, or shall knowingly hand in two or more tickets together, or having voted in one township, precinct, or county, shall afterwards, on the same day, vote or attempt to vote in another township, precinct, or county, such person shall be fined in any sum not exceeding fifty dollars, and be incapable of voting at any election, or holding any office, for two years thereafter.

SEC. 94. If any inspector, judge, or clerk of an election shall attempt to induce, by persuasion, menace, or reward, or promise thereof, any elector to vote for any person, such person, so offending, shall be fined in any sum not exceeding one hundred dollars.

SEC. 95. If any person, knowing that he does not possess the legal qualifications of a voter, at any election authorized by law to be held in this territory for any officer whatever, shall vote at such election, such person, so offending, shall be fined not more than one hundred, nor less than five dollars.

SEC. 96. If any judge, inspector, clerk, or other officer of an election, shall open or mark, by folding or otherwise, any ticket presented by such elector at such election, or attempt to find out the names thereon, or suffer the same to be done by any other person, before such ticket is deposited in the ballot box, such person, so offending, shall be fined in any sum not exceeding one hundred dollars.

SEC. 97. If any person shall use any threats, menaces, force, or any corrupt means, at or previous to any election, held pursuant to the laws of this territory, towards any elector, to hinder or deter such elector from voting at such election, or shall directly or indirectly offer any bribe or reward of any kind, to induce any elector to vote contrary to his inclination or shall on the day of election give any public treat, or authorize any other person to do so, to obtain votes for any person, such person, so offending, shall be fined in any sum not exceeding five hundred dollars, and be incapable of holding any office for two years after conviction thereof.

SEC. 98. Every person who shall sell any lottery tickets, or share in any lottery, for the division of property to be determined by chance, or shall make or draw any lottery or scheme for a division of property, not authorized by law, on conviction thereof, shall be fined in any sum not exceeding five hundred dollars.

SEC. 99. Every person who shall deal cards at the game called faro or monte, or other banking games, or shall set up, keep or exhibit an E-O or roulette table, or shuffle board, or any gaming table whatever, for the purposes of gaming, or shall have in his possession, to be used for such purposes, any gambling device whatever, shall, on conviction, be fined in any sum not exceeding one thousand dollars.

SEC. 100. Every person who shall suffer any gaming table, bank, or gambling device, prohibited in this chapter, to be kept or exhibited, or used for the purpose of gaming, in any house, building, steamboat, raft, or other water crafts, lot, yard, or garden, to him belonging or by him occupied, or of which he has the control, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 101. If the taker up of estray property shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he shall knowingly and willfully violate any of the provisions of the law regulating the taking up of estrays, such person, so offending, shall be fined in any sum not exceeding five hundred dollars, and not less than double the value of such estray property.

SEC. 102. Every person who shall in any manner obstruct any public highway, turnpike, plank road, or bridge, or injure any material used in the construction of such roads or bridge, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 103. Every master, mate, or other officer, or other person belonging to or in any charge of any vessel, who shall discharge the ballast of such vessel into the navigable portions or channel of any of the bays, harbors, or rivers within or bordering on this territory, where the water is less than ten fathoms deep, shall, on conviction thereof, be fined any sum not exceeding one thousand dollars.

SEC. 104. Every person who shall in any manner obstruct the navigable portion or channel of any bay, harbor, or river, or stream, within or bordering upon this territory, navigable and generally used for the navigation of vessels, boats, or other water crafts, or for the floating down of logs, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, provided that the placing of any mill dam or boom across a stream, used for floating saw logs, shall not be construed to be an obstruction to the navigation of such stream, if the same shall be so constructed as to allow the passage of boats or logs without unreasonable delay.

SEC. 105. If any auditor, treasurer, sheriff, assessor, or county commissioner shall purchase, exchange, or receive in payment, during his term of office, any territorial or county order, or demand, for less than the amount of such order or demand, on conviction thereof, he shall be fined in any sum not exceeding one thousand dollars.

SEC. 106. If any supervisor of roads fail to keep his highways and bridges in his road district, in as good repair as the available labor or other means of such district will enable him to do, or fail to discharge any other duty required of him by law, he shall, on conviction thereof, be fined in any sum not exceeding two hundred dollars; and upon prosecution for neglecting to keep a highway in good repair, it shall be sufficient to prove that such highway is commonly reputed as such.

SEC. 107. If any clerk of a district court, or any other person, shall be guilty of any fraud, either by practicing on a jury box previously to a draft, or in changing a juror, or in any way in the drawing of jurors, he shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 108. If any ferry man, ferry owner, ferry keeper, or keeper of a toll bridge or toll gate, himself, or by any person in his employment, shall demand or receive any greater fees on account of ferriage or toll, than is or may be fixed by law, or by the proper board doing county business, as the rates of ferriage or toll to be received by such person, upon conviction he shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one month.

SEC. 109. Any person authorized by the laws of this territory to join parties in marriage, who shall knowingly join in marriage any parties contrary to the provisions of the law regulating marriages, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 110. Any person having joined parties in marriage, who shall fail to return a certificate thereof within the time prescribed by law, shall be fined in any sum not exceeding three hundred dollars.

SEC. 111. Every person who shall undertake to join parties in marriage, knowing that he is not authorized so to do, shall, upon conviction thereof, be imprisoned in the county jail not more than three months, or fined in any sum not exceeding five hundred dollars.

SEC. 112. If any person having knowledge of the commission of any crime, shall take any money, gratuity, reward, or any engagement therefor, upon an agreement or understanding, express or implied, to compound or conceal such crime, or not to prosecute therefor, or not give evidence thereof, he shall, on conviction thereof, be imprisoned in the county jail for any length of time not exceeding one year, or be fined in any sum not exceeding one thousand dollars.

VII. OF OFFENSES AGAINST MORALITY AND DECENCY.

Sec. 113. Seduction, punishment thereof; evidence in case of.
114. Adultery or fornication; punishment thereof.
115. Incest, punishment of the parties.
116. Polygamy, punishment thereof; proviso.
117. Notorious lewdness, punishment for.
118. Fine for publication or distribution of obscene books, pamphlets, &c.
119. Fine for disturbing grave yards.
120. Fine for disfiguring &c., tombstones, cemeteries, &c., &c.
121. Cruelty to animals; fine for.

SEC. 113. Every person who under promise of marriage, shall have illicit carnal intercourse with any female of good repute for chastity, under the age of twenty one years, shal lbe deemed guilty of seduction, and, upon conviction thereof, shall be imprisoned in the penitentiary for not more than ten years nor less than one year, or be imprisoned in the county jail not exceeding one year, and be fined in any sum not exceeding five hundred dollars; but no conviction shall be had under the provisions of this section, on the testimony of the female seduced, unsupported by other evidence, provided that the subsequent intermarriage of the parties may be pleaded in bar of a conviction.

SEC. 114. Every person who shall live in open and notorious adultery or fornication, shall, upon conviction thereof, be imprisoned in the county jail not exceeding three months, or be fined in any sum not exceeding five hundred dollars, or fined only.

SEC. 115. All persons being within the degrees of consanguinity in which marriages are prohibited, or declared by law to be incestuous and void, who, knowing such consanguinity, shall intermarry with each other, or shall commit adultery, or fornication with each other, shall be deemed guilty of incest, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than two years or imprisonedin the county jail [not] more than one year, and fined in any sum not exceeding five hundred dollars.

SEC. 116. If any person who knowingly has a former husband or wife living, shall marry another, he or she, shall be deemed guilty of the crime of polygamy, and shall, upon conviction thereof, be imprisoned in the penitentiary not more than four years nor less than one year, and be fined in any sum not exceeding five hundred dollars: *Provided*, That the provisions of this section, shall not extend to any person whose husband or wife shall have been continuously absent from the other, without having been heard from for the space of five years before such marriage, or to any person who shall have been divorced.

SEC. 117. Every person who shall be guilty of notorious lewdness or other public indecency, upon conviction thereof, shall be imprisoned in the county jail not exceeding six months, and be fined in any sum not exceedsng five hundred dollars, or fined only.

SEC. 118. Every person who shall print, publish, sell, or distribute, any book, or any pamphlet, ballad, printed paper or other things, containing obscene language or obscene prints, pictures, figures or descriptions, or shall introduce into any family, school or other place of education, or shall buy, procure, receive or have in his possession, any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of loan, sale, exhibition or circulation, or with intent to introduce the same into any family, school or place of education, or shall expose the same to public view, shall, on conviction thereof, be imprisoned in the county jail not more than six months, or be fined in any sum not exceeding five hundred dollars.

SEC. 119. If any person not being lawfully authorized, shall wilfully dig up, disinter, remove or convey away any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender, and every person accessory thereto, either before or after the fact, shall, upon conviction thereof, be imprisoned in the county jail not exceeding one year, and be fined not exceeding one thousand dollars, or fined only.

SEC. 120. Every person who shall wilfully disfigure, injure or remove any tombstone, monument, fence, tree or shrubbery around or within any cemetery, or shall use such cemetery for any other purpose than a burying ground, he shall, upon conviction thereof, be imprisoned in the county jail not exceeding six months and be fined in any sum not exceeding five hundred dollars, or shall be fined only.

SEC. 121. Every person who shall cruelly use, beat, torment, overload or overdrive, any horse, ox, mule or other animal, whether belonging to himself or to another, shall, upon conviction, be fined in any sum not exceeding three hundred dollars.

VIII. OF OFFENCES AGAINST PUBLIC HEALTH.

SEC. 122. Fine for selling unwholesome provisions.
123. Punishment for selling poison carelessly.
124. Punishment of a physician for injuring his patient.

SEC. 122. Every person who shall knowingly sell any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall, on conviction thereof, be imprisoned in the county jail not more than one year, and be fined not exceeding one thousand dollars, or fined only.

SEC. 123. Every apothecary, druggist or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, strychnine or other active poison, without having the word "poison," and the true name thereof in English, written or printed upon a label attached to the vial, box or parcel containing the same, shall, on conviction thereof, be imprisoned in the county jail, not more than six months and be fined in any sum not exceeding one hundred dollars, or fined only.

SEC. 124. If any physician or other person, while in a state of intoxication, shall prescribe any poison, drug or other medicine to another person, to his injury, he shall, on conviction thereof, be imprisoned in the county jail for any length of time not exceeding one year, and fined not exceeding five hundred dollars, or fined only.

IX. OF PRINCIPALS AND ACCESSORIES.

SEC. 125. Distinction between principal and accessory abolished.
126. Accessory after the fact, who is deemed.
127. Accessory after the fact, punished.

SEC. 125. No distinction shall exist between an accessory before the fact, and a principal, or between principals in the first and second degree, and all persons concerned in the commission of an offense, whether they directly council the act constituting the offense, or council, aid and abet in its commission, though not present, shall hereafter be indicted, tried and punished as principals.

SEC. 126. Every person not standing in the relation of husband or wife, parent or grand parent, child or grand child, brother or sister by consanguinity or affinity to the offender, who after the commission of any felony, shall harbor, conceal or maintain, or assist any principal felon or accessory before the fact, or shall give the offender any other aid, knowing that he had committed a felony, or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial or punishment, shall be deemed accessory after the fact, and shall, on conviction thereof, be imprisoned in the county jail not more than one year, or be fined in any sum not exceeding five hundred dollars.

SEC. 127. Every person who shall become an accessory after the fact to any felony, may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously or shall or shall not be amenable to justice, by any court having jurisdiction to try the principal felon, and either in the county where such person shall become an accessory or in the county where such principal felony shall have been committed.

X. OF FINES.

SEC. 128. Fines collected under this act to be school funds.
Officers refusing to pay over fines to be fined.

SEC 128. All fines imposed on any person by the provisions of this act where the same shall be collected, shall be paid to the county treasurer as [school] funds of the county, where such conviction shall have been had, who shall give duplicate receipts therefor, one of which shall be filed with the county auditor, and all officers refusing or neglecting to pay over any fines within one month after they shall have been received, shall, upon conviction thereof, be fined in four-fold the amount of such fines so received.

GENERAL PROVISIONS RELATIVE TO CRIMES AND PUNISHMENTS.

SEC. 129. When an offence is committed in two counties, either county may have jurisdiction.
130. Certain offences may be punished in either of two counties.
131. The jurisdiction for burglary or larceny may be in the county where the property is taken or found.
132. When a wound is given in one county and the party dies in another, the jurisdiction may be in either.
133. In prosecutions for offences against property, possession will be sufficient ownership.

134. The term "person" defined.
135. The construction of the terms of this act.
136. Offences committed under the laws heretofore in force not affected by this act.
137. All prosecutions under this act, must, in the pleadings, conform to an act regulating pleadings.

SEC. 129. When a public offense has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

SEC. 130. Offenses committed on the boundary line of two counties or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed in either of them, and may be prosecuted and punished in either county.

SEC. 131. When property taken in one county by burglary, robbery, larceny or embezzlement, has been brought into an another county, the jurisdiction is in either county.

SEC. 132. If any mortal wound is given, or poison administered in one county, and death, by means thereof, ensue in another, the jurisdiction is in either.

SEC. 133. In the prosecution of any offense committed upon, or in relation to, or in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring or fraudulently receiving or concealing any money, goods or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

SEC. 134. When the term "person" or other word is used to designate the party whose property is the subject of an offense, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this territory, or any state or territory, or any public or private corporations, as well as an individual.

SEC. 135. Every term in this act implying one only, shall, when required, be construed to mean two or more, and any term implying two or more, shall also be construed to mean, when required, but one, except in cases where two or more are necessary to constitute the offense, and every term implying sex, shall, when necessary, be construed to mean both or either.

SEC. 136. No offense committed against the laws heretofore in force, shall be affected by the provisions of this act, except where any punishment may have been mitigated by those provisions; they may be extended and applied to any judgment hereafter to be pronounced.

SEC. 137. No prosecution for any offense committed, shall be affected by the provisions of this act, except that the proceeding in such prosecution shall be conformed, when necessary, to the provisions of the act regulating proceedings in criminal prosecutions.

Passed April 28, 1854.

AN ACT TO REGULATE THE PRACTICE AND PLEADINGS IN PROSECUTIONS FOR CRIMES.

I. *Of search warrants and proceedings thereon.*
II. *Of fugitives from justice.*
III. *Of proceedings to prevent the commission of crime.*
IV. *Of the examination of offenders and taking bail.*
V. *Of the grand jury.*
VI. *Of indictments.*
VII. *Of proceedings before trial.*
VIII. *Of the docket.*
IX. *Of the arraignment of the defendant.*
X. *Of witnesses and evidence.*
XI. *Of change of venue.*
XII. *Of trials.*
XIII. *Of new trial and arrest of judgment.*
XIV. *Of judgment and execution.*
XV. *Of suits of error and appeal.*
XVI. *Miscellaneous provisions.*

I. OF SEARCH WARRANTS AND PROCEEDINGS THEREON.

SEC. 1. When a search warrant may issue.
2. When search warrants may issue for counterfeit coin or for counterfeiting implements, and for gaming apparatus, &c.
3. What is a search warrant.
4. Duty of the officer executing a search warrant.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* When complaint shall have been made on oath, to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue a warrant to search for such property.

SEC. 2. Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint, made on oath, issue search warrant in the following cases, to wit:

1st. To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

2d. To search for and seize any gaming apparatus, used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

SEC. 3. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search are believed to be concealed, which place and property, or things to be searched for, shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrates who shall issue the warrant, or before some other magistrate or court having cognizance of the case.

SEC. 4. When any officer in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized, shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced in evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant, shall be destroyed under direction of the court or magistrate.

II. DEMANDING FUGITIVES FROM JUSTICE.

SEC. 5. The governor authorized to appoint agents to demand fugitives from justice; duty of the prosecuting attorney and governor; accounts of such agents to be paid by the territory.
6. Duty of the governor and prosecuting attorney when a fugitive from justice is demanded.
7. When any person charged with an offense in another state or territory is found in this territory, a warrant may issue for his arrest.
8. Such person may be tried and detained for the demand of the executive where the offense was committed.
9. Such person may be discharged; when and how; may be taken by any agent of the executive at any time.
10. The complainant to be liable for costs and expenses of suit &c.

SEC. 5. The governor of this territory may in any case authorized by the constitution and laws of the United States, apppoint agents to demand of the executive authority of any state or territory, any fugitive from justice, or any other person charged with felony or any other crime in this territory, and whenever an application shall be made to the governor for that purpose, the prosecuting attorney, or any other prosecuting officer of the territory, when required by the governor, shall forthwith investigate the ground of such application, and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence and his opinion as to the expediency of the demand, but the governor may, in any case, appoint such agents without requiring the opinion of, or any report from the prosecuting attorney, and the accounts of the agents appointed for such purpose, shall in all cases be audited by the territorial auditor, and paid from the territorial treasury.

SEC. 6. When a demand shall be made upon the governor of this territory by the executive of any state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory, with treason, felony, or any other crime, the prosecuting attorney or any other prosecuting officer, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody, or is under recognizance to answer for any offense against the laws of this territory or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the governor be satisfied that such demand is conformable to law and ought to be complied with, he shall issue his warrant under the seal of the territory, authorizing the agents who make such demand, either forthwith or at such time as shall be designated by the warrant, to take and transport such person to the line of the territory at the expense of such agents, and shall also by such warrant require the civil officers within this territory, to afford all needful assistance in the execution thereof.

SEC. 7. Whenever any person shall be found within this territory, charged with any offense committed in any state or territory, and liable, by the constitution and laws of the United States, to be delivered on the demand of the executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases, may upon complaint under oath, setting forth the offense, and such other matter as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court, or magistrate so authorized within the territory, to answer such complaint as in other cases.

SEC. 8. If upon the examination of the person charged, it shall appear to the court or magistrate, by proof in addition to the oath of the complainant, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate, and if such person shall not so recognize, he shall be committed to prison and be there detained such day, in like manner as if the offense charged had been committed in this territory, and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall he had as in the case of other recognizances, entered into before such court, or magistrate, but if such person be charged with a capital crime, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

SEC. 9. If the person so recognized or committed, shall appear before the court or magistrate upon the day ordered, he shall be discharged unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or require of him to recognize anew for his appearance at some other day; and if when ordered, he shall not so recognize, he shall be committed and be detained as before provided; whenever the person so appearing shall be recognized, committed or discharged, any person authorized by the warrant of the executive, may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SEC. 10. The complainant in such cases shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board, at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he fails to do so, the jailor may forthwith discharge the person from his custody.

III. PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

SEC. 11. Powers of a justice of the peace.
12. Justice of the peace may examine and reduce to writing the complaint of any person.
13 When and how a warrant may issue on complaint.
14. Magistrate to hear complaint; may bind the offender over to be tried at district court.
15. When person fails to recognize, must be committed, &c.

16. When defendant may be discharged, and complainant to pay costs.
17. Costs, how paid, &c.
18. Appeal may be taken.
19. On appeal, witnesses may be recognized.
20. Powers of the court before which the appeal is taken.
21. Persons failing to prosecute an appeal to be responsible for all costs &c.
22. Persons committed for not giving security may be discharged.
23. Every recognizance must be filed by the clerk of the district court.
24. When a person may be recognized to keep the peace without process.
25. Court may remit penalty, when.
26. When surety may surrender principal.

Sec. 11. Justices of the peace shall have power to cause all laws made for the preservation of the public peace to be kept, and in the execution of that power may require persons to give security to keep the peace, for their good behavior, or both, in the manner herein provided.

Sec. 12. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offense against the property or person of another, the magistrate shall examine the complaint, and any witness who may be produced on oath, and reduce such complaints to writing, and cause the same to be subscribed by the complainant.

Sec. 13. If upon examination it shall appear that there is just cause to fear that such offense may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate or some other magistrate or court having jurisdiction of the cause.

Sec. 14. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, hear and examine the complaint. And if it shall appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be required to enter into recognizances with sufficient sureties, in such sum as the magistrate shall direct, towards all the people of this territory, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding one year, but he shall not be ordered to recognize for his appearance at the district court, unless he is charged with some offense for which he ought to be held to answer at said court.

Sec. 15. If the person so ordered to recognize, shall fail to enter into such recognizance, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognise, stating in the warrant the cause of commitment, with the sum and time for which security was required.

Sec. 16. If upon examination it shall not appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

SEC. 17. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace, or for his good behavior, the magistrate may further order that the costs of prosecution or any part thereof, shall be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

SEC. 18. Any person aggrieved by the order of any magistrate requiring him to recognize as aforesaid, may on giving the security required, appeal to the district court.

SEC. 19. The magistrate from whose order an appeal is so taken, shall require such witnesses as he may think necessary to support the complaint, to recognize for their appearance at the court to which the appeal is made.

SEC. 20. The court before which such appeal is prosecuted may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable.

SEC. 21. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs which shall be ordered, by the court appealed to, to be paid by the appellant.

SEC. 22. Any person committed for not finding sureties or refusing to recognize as required by the magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

SEC. 23. Every recognizance taken pursuant to the foregoing provisions, shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

SEC. 24. Every person who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any judge of court of record, make an affray or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who in the presence of such judge or magistrate, shall contend with hot and angry words to the disturbance of the peace, may be ordered, without process or any other proof to recognize, for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal may be committed as before directed.

SEC. 25. Whenever upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

SEC. 26. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance, and the person so surrendered, may recognize anew, with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

IV. OF EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.

SEC. 27. Duty of a justice of the peace, probate judge, or district judge, upon complaint being made in a criminal case.
28. The sheriff may pursue to any county in the territory.
29. A magistrate to take recognizance for appearance.
30. Defendant failing to recognize, may be ordered into custody.
31. If it appear no offense has been committed, the complainant must pay cost.
32. When justice may take cognizance of the case.
33. When bailable offense has been committed, the defendant may be held to bail.
34. Certain cases when justice shall not take a recognizance unless surety approved by another justice; defendant in custody may be recognized.
35. Justice may associate one or more magistrates with him. No fees to be taxed for such associate.
36. Witnesses may be recognized.
37. When witness may be recognized.
38. Provision when married woman or minor is a material witness.
39. All witnesses refusing to recognize may be committed.
40. Testimony may be reduced to writing.
41. Examinations and recognizances must be filed with the clerk of the district court.
42. When a magistrate may discharge a recognizance, or supersede a commitment.
43. When default to be recorded; duty of the prosecuting attorney.
44. Magistrate to forward an abstract of costs in all cases where the defendant is recognized.

SEC. 27. Upon complaint being made to any justice of the peace or probate judge, or judge of the district court, in open court, or in vacation, that a criminal offense has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant, and if it shall appear that any offense has been committed of which the district court has exclusive jurisdiction, the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the person issuing the warrant, unless he shall be absent or unable to attend thereto, then before some other magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

SEC. 28. If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this territory, and for that purpose may command aid, and exercise the same authority as in his own county.

SEC. 29. The magistrate before whom such accused person shall be brought, when the offense is bailable, may at the request of such person, with or without examination, allow him to enter into recognizance, with sufficient sureties, to be approved by the magistrate, conditioned for his appearance at the next term of the district court having cognizance of the offense.

SEC. 30. If the defendant shall not enter into recognizance with sureties, the magistrate shall proceed to hear and examine the complaint, and may adjourn the examination from time to time, not exceeding in all ten days from the time such defendant shall have been brought before him, and in case of such adjournment, the magistrate may, if the offense be bailable, take a recognizance with sufficient sureties for the appearance of the defendant at such further examination; and if he fail to enter into such recognizance, he shall be ordered into custody until the time appointed for such examination.

SEC. 31. If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he shall be discharged, and if, in the opinion of the magistrate, the complaint was malicious, or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint.

SEC. 32. If it should appear that an offense has been committed, of which a justice of the peace has jurisdiction, and one which would be sufficiently punished by fine not exceeding thirty dollars, if the magistrate having the complaint is a justice of the peace, he shall cause the complaint to be altered, and proceed as in like cases before a justice of the peace, or any other magistrate; he shall certify the papers with a statement of the offense appearing to be proved, and recognize the witnesses and the defendant to appear before the nearest justice of the peace, at a time appointed, who shall proceed as herein provided.

SEC. 33. If it appears that a bailable offense has been committed, the magistrate shall order the defendant to enter into recognizance, with sufficient sureties, for his appearance at the next term of the district court, and if he shall not do so, or the offense be not bailable, he shall commit him to jail.

SEC. 34. No justice of the peace shall take a recognizance from any defendant charged with murder in the second degree, manslaughter, kidnapping, arson, rape, or burglary, robbery, or grand larceny, unless the sureties therein shall be approved by some other justice of the peace, or the probate judge of the county; and if the defendant be in custody for not entering into recognizance of bail, any judge of probate in the county or any judge of the district court, may allow him to enter into recognizance in the amount required, or in any amount they may think fit, with sufficient sureties.

SEC. 35. Any magistrate to whom complaint is made, or before whom any defendant is brought, may associate with himself one or more magistrates of the same county, and they may together execute the powers and duties before mentioned; but no fees shall be taxed for such associates.

SEC. 36. Where the person arrested is held to bail, or committed to jail, or forfeits his recognizance, the magistrate shall recognise the witnesses for the prosecution to be and appear at the next term of the district court having cognizance of the offense charged in the complaint.

SEC. 37. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into recognizance, with such sureties as may be deemed necessary for his appearance at court.

SEC. 38. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

SEC. 39. All witnesses required to recognize, either with or without sureties, shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

SEC. 40. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses.

SEC. 41. All examinations and recognizances taken by any magistrate in pursuance of the provisions of this law, shall be certified and returned by him to the prosecuting attorney, or the clerk of the district court, on or before the first day of the next term thereof, and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment, as for contempt.

SEC. 42. When any person shall be committed to prison, or shall be under examination or recognizance to answer any charge for a misdemeanor for which the party injured may have a remedy by a civil action, except where the offense was committed upon a sheriff or other officer, justice, or violently, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, or is conducting the examination, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of all costs which may have accrued, discharge the recognizance, or supercede the commitment by an order under his hand, and may also discharge all recognizances and supersede the commitment of all witnesses in the case.

SEC. 43. When any person under recognizance in any criminal prosecution, either to appear and answer before a justice, to testify in any court, shall fail to perform the condition of any such recognizance, his default shall be recorded; (and it shall be the duty of the prosecuting attorney to proceed at once by action against the person bound by recognizance, or such of them as he may elect.)

SEC. 44. In all cases where any magistrate shall order a defendant to recognize for his appearance before a justice of the peace, or the district court, he shall forward with the papers in the case, an abstract of the costs that have accrued in the case, and such costs shall be subject to the final determination of the case.

V. OF THE GRAND JURY.

SEC. 45. When and how challenges to be allowed.
46. When challenges to individual grand jurors may be made.
47. Proceeding when a challenge is allowed.
48. Individual challenge allowed, panel to be filled.
49. Form of grand juror's oath.
50. Foreman and clerk to be appointed.
51. Grand jury to be charged by the court, and may advise with the court.
52. Prosecuting officer may attend the grand jury.
53. Especial duties of the grand jury.

SEC. 54. How the grand jury may take evidence.
55. Twelve necessary to find an indictment.
56. Indictment to be kept secret.
57. Vote and opinions in the jury room not to be disclosed.
58. How and when a grand jury may be re-summoned.

SEC. 45. Challenges to the panel shall be allowed to any person in custody, or held to bail to answer to an offence, when the clerk has not drawn from the jury box the requisite number of ballots to constitute a grand jury, or when the drawing was not done in the presence of the proper officers; and such challenges shall be in writing and verified by affidavit, and proved to the satisfaction of the court.

SEC. 46. Challenges to individual grand jurors may be made by such person for reason of want of qualifications to sit as such juror, and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice.

SEC. 47. If a challenge to the panel be allowed, the panel shall be discharged, and the court may order the sheriff to summon from the bystanders and the body of the county, a sufficient number of persons to act as grand jurors at such term of the court.

SEC. 48. If a challenge to an individual juror be allowed, he shall be discharged and the panel filled.

SEC. 49. The following oath shall be administered to the grand jury:

You, as grand jurors for the body of the county of ———, (as the case may be) do solemnly swear (or affirm) that you will diligently enquire into, and true presentment make, of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the United States of America, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred or malice; neither will you leave any person unpresented through fear, favor, affection or reward, or the hope thereof; but that you will present things truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this territory, so help you God.

SEC. 50. A foreman of the grand jury shall be appointed by the court, who may remove him and appoint another at any time, and such foreman shall have power to administer all oaths and affirmation to witnesses, who shall appear before such grand jury, and the jury may appoint one of their number as clerk to keep a minute of their proceedings.

SEC. 51. The grand jury shall be charged by the court as to the nature of their duties, and may at any reasonable time ask the advice of the court as to any legal questions upon which they may desire information.

SEC. 52. The prosecuting officer may attend on the grand jury for the purpose of examining witnesses, and giving them such advice as they may ask.

SEC. 53. The grand jury shall especially inquire as to the offense of any person confined in prison on a criminal charge; into the condition and mismanagement of the public prisons in the county; into the wilful misconduct in office of public officers, and shall in their discretion examine the public records of the county.

SEC. 54. The grand jury are not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may cause process to issue for the witnesses.

SEC. 55. No indictment shall be found unless twelve grand jurors vote for the finding thereof.

SEC. 56. No grand juror shall disclose the fact that an indictment for a felony has been found against any person not in custody or under recognizance, until such person has been arrested.

SEC. 57. No grand juror shall be allowed to state or to testify in any court in what manner he, or any other member of the jury, voted on any question before them, or what opinion was expressed by any juror in relation to such question, or what question was before them; and in charging the grand jury, the court shall remind them of the provisions of this and the preceding sections.

SEC. 58. Whenever the grand jury shall have been dismissed at any term of the court, for which they shall have been empannelled, before the final adjournment, they may be summoned to attend again at the same term, if necessary; and if a full jury do not attend, the number may be completed from the bystanders.

VI. OF INDICTMENTS.

SEC. 59. Indictments to be signed, endorsed, &c.
60. The court may cause indictments to be corrected.
61. What an indictment shall be.
62. Indictment must not be questioned for want of form.
63. When indictment may be amended.
64. When it is sufficient to state the name of the owner or owners of property in an indictment.
65. General allegations sufficient in indictment, but facts must be proved on trial.
66. In pleading a statute, reference to its title and date sufficient.
67. Perjury, indictments for, how made, &c.
68. In an indictment for forgery, if the instrumrnt alleged to be forged has been destroyed, the misdescription of it is immaterial.
69. When plea in abatement may be allowed.

SEC. 59. Indictments shall be signed by the prosecuting attorney, and endorsed a true bill, and such endorsement, signed by the foreman of the grand jury, and the names of the witnesses examined before the grand jury, or relied in by the territory, endorsed thereon, and returned into open court.

SEC. 60. The court shall examine the indictments returned, and if it appear that the prosecuting attorney has neglected to sign his name, or the foreman of the grand jury to sign the endorsement of a true bill, or that the names of the witnesses are not endorsed thereon, the court must cause the proper correction to be made in the presence of the grand jury.

SEC. 61. An indictment shall specify the name of the court, and the names of the parties. It shall be direct and certain as regards the party charged, the offence charged, and the particular circumstances of the offence charged when necessary.

SEC. 62. No indictment shall be quashed for a mistake in the name of the county in the title, for want of an allegation of time or place of any material fact, when they have been once stated in the body of the indictment, nor because figures are used to express dates and numbers, nor for any mistake in concluding, contrary to the form of the statute or statutes, as the case may be, or for omission of the words, "force and arms," or "against the peace and dignity of the territory of Washington," or for the want of the signature of the prosecuting attorney.

SEC. 63. All indictments may be amended by the record, and in all matters of form, when the same can be done without injury to the substantial rights of the defendant.

SEC. 64. In an indictment for an offence committed in relation to property, it is sufficient to state the name of any one, or names of several or joint owners.

SEC. 65. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is sufficient to allege generally, that the judgment or determination was duly made or had before such court or officer; but the facts constituting the jurisdiction must be established on the trial.

SEC. 66. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its approval, and the court must take notice thereof.

SEC. 67. In indictments for perjury, in a judicial proceeding, it shall only be necessary to set forth in the indictment the names of the parties to the action, in which the perjury is alleged to have been committed, in what court the party charged, and by whom, avering such court or officer to have competent authority, the statement sworn to, in substance, together with the proper averments to falsify the record on which the perjury may be assigned, without setting forth the pleading matter or proceedings, or authority of the court or officer, before whom the perjury is alleged to have been committed, and an indictment for perjury, in swearing to any written instrument, or any statement in writing, it shall only be necessary to set forth that part of the instrument alleged to have been falsely sworn to, and to negative the same with the name of the officer or court, before whom the instrument was sworn to.

Sec. 68. When an instrument, which is the subject of an indictment for forgery, has been destroyed, or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

Sec. 69. No plea in abatement of an indictment shall be allowed, except for causes, where the defendant, had he been in custody or under recognizance, could have challenged the panel, or for causes that would be good ground for challenge to four, or more, individual jurors.

VII. OF PROCEEDINGS BEFORE TRIAL.

Sec. 70. Warrant to issue on indictment, within ten days after court.
71. To whom warrant must issue; service thereof.
72. Court to fix the bail; bail to be endorsed on warrant. If no order is made, how amount of bail to be fixed.
73. On writs of attachment, court must fix bail.
74. Officer must show authority to defendant.
75. Officer may use all necessary means in case of resistance.
76. When a prisoner escapes, the person from whom he escapes may pursue, and use the same means to retake such person, as in case of arrest.
77. Recognizances may be taken in open court.
78. Officer executing warrant may take bail, &c.
79. Recognizance must be certified to the clerk of the court; clerk must record the recognizance.
80. Clerk may receive deposit of money for bail.
81. Failure to appear must be entered, and recognizance to be forfeited.
82. The person indicted may have time, a list of the jury, processes for witnesses, &c.
83. Persons indicted entitled to copy of indictment, without fee.
84. When proceedings may be stayed, and defendant discharged on indictment.
85. When a *nolle prosequi* may be entered.

Sec. 70. When an indictment is found, the court may direct the clerk to issue a warrant, returnable forthwith; if no order is made, the clerk must issue a warrant upon all indictments, within ten days after the close of the term.

Sec. 71. The warrant shall issue to the sheriff of the county where the indictment is found, unless the prosecuting attorney directs the warrants to be issued to some other county. Warrants may issue to different counties, at the same time; the sheriff must execute the warrant, and serve the summons immediately, upon being delivered to him.

Sec. 72. The court, at each term, must order the amount in which persons, charged by indictment, are to be held to bail, and the clerk must endorse the amount on the warrant. If no order, fixing the amount of bail, has been made, the sheriff may present the warrant to the judge of the district court, and such judge must thereon endorse the amount of bail to be required; or, if there is no such judge in the county, the clerk may fix the amount of bail.

SEC. 73. When writs of attachment are returnable after the close of term, the court must direct the amount of bail to be required of the defendant.

SEC. 74. The officer must inform the defendant that he acts under authority of a warrant, and must also show the warrant, if required.

SEC. 75. If, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

SEC. 76. If a person arrested escape, or be rescued, the person from whose custody he made his escape, or was rescued, may immediately pursue and retake him, at any time, and within any place, in the territory.—To retake the person escaping, or rescued, the person pursuing has the same power to command assistance, as is given in cases of arrest.

SEC. 77. Recognizances, in criminal proceedings, may be taken in open court, and entered on the order book.

SEC. 78. Any officer, authorized to execute a warrant in a criminal action, may take the recognizance, and justify and approve the bail; he may administer an oath, and examine the bail as to its sufficiency.

SEC. 79. Every recognizance, taken by any peace officer, must be certified by him forthwith to the clerk of the court, to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and from the time of filing, it has the same effect as if taken in open court.

SEC. 80. The defendant may, in the place of giving bail, deposit with the clerk of the court to which he is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody.

SEC. 81. If, without sufficient excuse, the defendant neglect to appear for trial, or trial or judgment, or upon any other occasion, when his presence in court may be lawfully required, according to the condition of his recognizance, the court must direct the fact to be entered upon its minutes, and the recognizance of bail, or money deposited as bail, as the case may be, is thereupon forfeited.

SEC. 82. As soon as may be, after the finding of such indictment for a capital crime, the party charged shall be served with a copy thereof, by the sheriff or his deputy, at least twenty-four hours before trial, and shall, on demand upon the clerk, by himself or counsel, have a list of the petit jurors returned, delivered to him at least twenty-four hours before trial, and shall, also, have process to summon such witnesses as are necessary to his defense, at the expense of the county.

SEC. 83. Every person indicted for an offense for which he may be imprisoned in the penitentiary, if he be under recognizance or in custody, to answer for such offense, he or his attorney shall be furnished with a copy of the indictment, and of all endorsements thereon, without paying any fees therefor.

SEC. 84. Whenever an indictment is found against any person for an assault and battery, or other misdemeanor, for which the party injured may have a remedy by civil action, except where the offense was committed by or upon any sheriff, or other officer of justice, or riotously, or with intent to commit a felony, if the party injured shall appear in court where such indictment is pending, and acknowledge satisfaction for the injuries sustained, the court may, on payment of the costs accrued, order all further proceedings to be stayed, and discharge the defendant from the indictment, which shall forever bar all remedy for such injury by civil action.

SEC. 85. The court may, in its discretion, on motion of the prosecuting attorney, order a nolle prosequi to be entered, in any case, but no prosecuting attorney shall, without leave of the court, in any case cause such entry to be made.

VIII. OF THE DOCKET.

SEC. 86. Order of the docket, and what it shall specify.

SEC. 86. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments pending, to be tried at the term according to the date of their filing, and specifying opposite to the title of each action, whether it be for a felony or a misdemeanor, and whether the defendant be in custody or on bail, and shall, in like manner, enter therein all indictments found during the term, and on which issues of fact are joined; all cases sent to the court on change of venue, and all cases sent to the court by a magistrate, on appeal or otherwise.

IX. OF THE ARRAIGNMENT OF THE DEFENDANT.

SEC. 87. When prisoner pleads guilty, court may determine the punishment.
88. When no plea is made, court may order plea of "not guilty" to be entered.
89. Counsel may be assigned to a prisoner unable to pay.
90. Proceedings in case of misnomer.
91. Misnomer not to stay proceedings.
92. When defendant may appear by counsel.

SEC. 87. If on the arraignment of any person he shall plead guilty, if the offense charged be not murder, the court shall, in their discretion, hear testimony, and determine the amount and kind of punishment to be inflicted; but if the defendant plead guilty to a charge of murder, a jury shall be empanneled to hear testimony, and determine the degree of murder, and the punishment therefor.

SEC. 88. If, on the arraignment of any person who is indicted, he shall refuse to plead or answer, or shall not confess the indictment to be true, the court shall order a plea of not guilty to be entered, and thereupon, the proceedings shall be the same as if he had pleaded not guilty to the indictment, and, for cause shown, he shall have reasonable time to answer the indictment.

SEC. 89. If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and he shall be asked if he desire the aid of counsel, and if it appears that he is unable to employ counsel, by reason of poverty, counsel shall be assigned him by the court, at the expense of the county, and, in capital cases, at the expense of the territory.

SEC. 90. When the defendant is arraigned, he shall be informed, if the name by which he is indicted be not his true name; he shall then declare his true name, or be proceeded against by the name in the indictment.

SEC. 91. If he allege that another name is his true name, it must be entered in the minutes of the court, and the subsequent proceedings on the indictment may be had against him by that name, referring, also, to the name by which he is indicted.

SEC. 92. If the indictment be for a misdemeanor, punishable by fine only, the defendant may appear upon arraignment by counsel.

X. OF WITNESSES AND EVIDENCE.

SEC. 93. Witnesses may be compelled to attend, and recognized to appear.
94. Clerks to issue subpœna for witnesses, on indictment, but continuance not granted to the territory, on account of the absence of such witnesses.
95. Competent witnesses.
96. When, and how far, confessions may be taken as evidence.
97. The rules of evidence in civil actions, to be applied to criminal prosecutions.

SEC. 93. Witnesses may be compelled to attend, and testify before the grand jury; and witnesses on behalf of the territory, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpœnaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may recognize witnesses, with or without sureties, to attend and testify at the same or next term of the court, or at any term of a court within the territory.

SEC. 94. The clerk shall, at the time of issuing a warrant for the defendant, issue a subpœna for all the witnesses, whose names are endorsed on the indictment, and any others required; but in no case shall a continuance be granted to the territory, on account of the absence of any witness, whose name is not endorsed on the indictment.

SEC. 95. Witnesses, competent to testify in civil cases, shall be competent in criminal prosecutions, but regular physicians or surgeons, clergymen or priests, shall not be protected from testifying as to confessions, or information received from any defendant, by virtue of their profession or character; and Indians shall be competent witnesses, in any prosecutions in which an Indian may be a defendant.

SEC. 96. The confession of a defendant, made under inducement, with all the circumstances, may be given in evidence against him, except when made under the influence of fear, produced by threats; but a confession made under inducement, is not sufficient to warrant a conviction, without corroborating testimony.

SEC. 97. The rules of evidence, in civil actions, so far as applicable, shall be applied to criminal prosecutions.

XI. OF CHANGE OF VENUE.

SEC. 98. Defendant may demand a fair trial.
99. When a change of venue may be granted. Clerk to certify the papers.
100. Defendant and witnesses to be recognized to appear where venue is placed.

SEC. 98. The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county, or some part thereof, and demand to be tried by disinterested triers.

SEC. 99. When the affidavit is founded on prejudice of the judge, the court may, in its discretion, grant a change of venue to some county, in another district, or may continue the cause to the next term of the court, which may be held by any other district judge; if the affidavit is founded upon excitement or prejudice in the county, against the defendant, the court may, in its discretion, grant a change of venue to the most convenient county. The clerk must thereupon make a transcript of the proceedings and order of court, and, having sealed up the same with the original papers, deliver them to the sheriff, who must without delay deposit them in the clerk's office of the proper county, and make his return accordingly.

SEC. 100. Where a change of venue is ordered, if the offense be bailable, the court shall recognize the defendant, and, in all cases, the witnesses to appear at the term of the court to which the change of venue was granted.

XII. OF TRIALS.

SEC. 101. Issues of fact to be tried by jury.
102. Peremptory challenges by defendant.
103. Peremptory challenges by prosecuting attorney.
104. Challenges to the panel, how allowed.
105. Challenges for cause how allowed.
106. Persons to be permitted to serve as jurors.
107. How the jury shall be sworn.
108. When case may be submitted to the court.
109. Prisoner to be present on trial.
110. When defendant may appear by proxy.
111. The court to decide all questions of law.
112. Instructions may be asked for and argued, must be in writing; court may give or refuse.
113. What shall be the charge to the jury.
114. Juries to be kept together.
115. View may be ordered.
116. One indictment against two or more jointly may be separated.
117. One defendant may be discharged to give evidence for or against his co-defendant.
118. When a mistake occurs defendant must not be discharged, but recognized to appear.
119. Mistake as to venue, how corrected.
120. Jury empannelled in case where a mistake has occurred may be discharged.
121. An acquittal or conviction a bar to further prosecution.
122. A jury may find the defendant guilty of an offense of a lower degree.
123. A jury may find the defendant guilty of an offense similar to that charged.
124. On an indictment against several, jury may agree upon one, and disagree upon the others.
125. Reconsideration of a verdict may be had.
126. When any person indicted for an offense, shall be discharged on ground of insanity, the court may order him committed, or into bonds, for safe keeping.
127. Rendition of verdict, how made.
128. Jury must state amount of fine, or degree of punishment.
129. Verdict to be rendered; defendant to pay the costs.

SEC. 101. Issues of fact, joined upon any indictment, shall be tried by a jury of twelve persons, and the law regulating the drawing, retaining, and selecting jurors, and trials by jury, in civil cases, shall apply to criminal cases, so far as the same may be applicable.

SEC. 102. In prosecution for capital offenses, the defendant may challenge, peremptorily, twelve jurors; in prosecution for offenses punishable by imprisonment in the penitentiary, six jurors; in all other prosecutions, three jurors. When several defendants are on trial together, they must join in their challenges.

SEC. 103. The prosecuting attorney, in capital cases, may challenge, peremptorily, six jurors; in all other cases, three jurors.

SEC. 104. Challenges to the panel shall only be allowed for a material departure from the forms prescribed by law, for the drawing and return of the jury, and shall be in writing sworn to and proved to the satisfaction of the court.

SEC. 105. Challenges for cause shall be allowed, for such cause as the court may, in its discretion, deem sufficient, having reference to the causes of challenge, prescribed in civil cases, as far as they may be applicable, and to the substantial rights of the defendant.

SEC. 106. No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death, shall be compelled or allowed to serve as a juror on the trial of any indictment for such an offense.

SEC. 107. The jury shall be sworn, or affirmed, to well and truly try the issue between the territory and the defendant, according to the evidence; and in capital cases, to well and truly try, and true deliverance make, between the territory and the prisoner at the bar, whom they shall have in charge, according to the evidence.

SEC. 108. The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court, except in capital cases.

SEC. 109. No person prosecuted for any offense punishable by death, or by confinement in the state's prison, or in the county jail, shall be tried unless personally present during the trial.

SEC. 110. No person prosecuted for any offense punishable by a fine only, shall be tried without being personally present, unless some responsible person, approved by the court, undertakes to be bail for stay of execution, and payment of the fine and costs that may be assessed against the defendant. Such undertaking must be in writing, and is as effective as if entered into after judgment.

SEC. 111. The court shall decide all questions of law which shall arise in the course of the trial.

SEC. 112. When instructions are asked for, they must be asked in writing, before the argument of the cause, and may, if required by the court, be argued; other instructions may be asked after the charge of the court, and the court may, in its discretion, give or refuse them.

SEC. 113. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict, and if it presents the facts of the case, shall, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

SEC. 114. Juries in criminal cases shall not be allowed to separate, except by consent of the defendant and the prosecuting attorney, but shall be kept together, without meal or drink, unless otherwise ordered by the court, to be furnished at the expense of the county.

SEC. 115. The court may order a view by any jury impanneled to try a criminal case.

SEC. 116. When two or more defendants are indicted jointly, any defendant, requiring it, shall be tried separately.

SEC. 117. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defense, direct any defendant to be discharged, that he may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving testimony for a co-defendant. The order of discharge is a bar to another prosecution for the same offense.

SEC. 118. When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant shall not be discharged if there appears to be good cause to detain him in custody; but the court must recognize him to answer to the offense shown, and if necessary, recognize the witnesses to appear and testify.

SEC. 119. When it appears, at any time before verdict or judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment to be corrected, and direct that all the papers and proceedings be certified to the proper court of the proper county, and recognize the defendant and witnesses to appear at such court, on the first day of the next term thereof, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced.

SEC. 120. When a jury has been empanneled, in either case contemplated in the two last preceding sections, such jury may be discharged without prejudice to the prosecution.

SEC. 121. When the defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein.

SEC. 122. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offense.

SEC. 123. In all other cases, the defendant may be found guilty of an offense, the commission of which is necessarily included within that with which he is charged in the indictment.

SEC. 124. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly.

SEC. 125. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict; and if, after such reconsideration, they return the same verdict, it must be entered, but it shall be good cause for new trial; but where there is a verdict of acquittal, the court cannot require the jury to reconsider it.

SEC. 126. When any person indicted for an offense, shall, on trial, be acquitted by the jury by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge, or going at large, of such insane person, shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

SEC. 127. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must be then called, and if all appear, their verdict must be rendered in open court; if all do not appear, the rest must be discharged without giving a verdict, and the cause must be tried again at the same or next term.

SEC 128. When the defendant is found guilty, the jury must state in their verdict the amount of fine, and the punishment to be inflicted.

SEC. 129. When the defendant is found guilty, the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise.

XIII. OF NEW TRIALS AND ARREST OF JUDGMENT.

SEC. 130. Upon what ground a new trial may be granted.
131. The facts to be set forth by affidavit.
132. Upon what ground judgment may be arrested.
133. When judgment may be arrested without motion.
134. When judgment is arrested, defendant may be held to bail, or re-committed.
135. Exceptions may be taken as in civil cases.

SEC. 130. An application for a new trial must be made before judgment, and may be granted for the following causes:

1st. When the jury has received any evidence, paper, document or book not allowed by the court, to the prejudice of the substantial rights of the defendant.

2d. Misconduct of the jury.

3d. For newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial.

4th. Accident or surprise.

5th. Admission of illegal testimony and misdirection of the jury by the court, in a material matter of law, excepted to at the time.

6th. When the verdict is contrary to law and evidence, but not more than two new trials shall be granted for these causes alone.

SEC. 131. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the preceding sections, the facts on which it is based, shall be set out in an affidavit.

SEC. 132. Judgment may be arrested on the motion of the defendant, for the following causes:

1st. No legal authority in the grand jury to inquire into the offense charged, by reason of its not being within the jurisdiction of the court.

2d. That the facts as stated in the indictment, do not constitute a crime or misdemeanor.

SEC. 133. The court may also on its views of any of these defects, arrest the judgment without motion.

SEC. 134. When judgment is arrested in any case, and there is reasonable ground to believe that the defendant can be convicted of an offense properly charged, the court may order the defendant to be recommitted, or admitted to bail anew, to answer a new indictment.

SEC. 135. Exceptions may be taken by the defendant, as in civil cases, on any matter of law by which his substantial rights are prejudiced.

XIV. OF JUDGMENTS AND EXECUTIONS.

SEC. 136. Court must pronounce judgment.
137. When defendant must be present.
When he may be absent for the purpose of judgment.
138. When defendant is not present his arrest may be ordered.
139. Defendant must be asked to show cause why judgment should not be pronounced against him.
140. When a bench warrant shall issue.
141. Defendant to be kept in custody until fine and costs are paid.
142. Execution may issue against defendants property.
143. Persons convicted may be recognized to keep the peace.
144. Action may be had on recognizance in case of a breach of the peace.
145. Execution for costs and fines may be stayed.
146. Clerk to approve the sureties for stay.
Execution may issue upon forfeiture of bond against defendant and bail, and against defendant's body.
147. Where fine and costs are not paid, defendant must be imprisoned one day for every three dollars.
148. A transcript of the minutes of the court to be made out in case of conviction.
149. The forms of punishment where imprisonment in the penitentiary is awarded.
150. Provisions where there is no place of imprisonment.

151. Defendant may work out his fine and costs, and his term of imprisonment.
152. Death warrant to be delivered to the sheriff.
What it shall state; limit of time.
153. Death to be by hanging.
154. Sheriff to make return of the warrant, &c.
155. When the time for the execution passes, the court may appoint a day.
156. Final record, how made, &c.

Sec. 136. After verdict of guilty, or finding of the court against the defendant, if the judgement be not arrested, or a new trial granted, the court must pronounce judgment.

Sec. 137. For the purpose of judgment, if the conviction be for an offense punishable by imprisonment, the defendant must be personally present; if for a fine only, he must be personally present, or some responsible person must undertake for him, to secure the payment of the judgment and costs; judgment may then be rendered in his absence.

Sec. 138. If in any case the defendant is not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in this territory, as a warrant of arrest in other cases.

Sec. 139. When the defendant appears for judgment, he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him.

Sec. 140. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Sec. 141. When the defendant is adjudged to pay any fine and costs, the court shall order him to be committed to the custody of the sheriff until the fine and costs are paid or secured, as is provided by law.

Sec. 142. Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions.

Sec. 143. Every court before whom any person shall be convicted upon an indictment for any offense not punishable with death or imprisonment in the penitentiary, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum, to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he shall so recognize.

Sec. 144. In case of the breach of the conditions of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

SEC. 145. Every defendant against whom a judgment has been rendered for fine and costs, may stay the execution for the fine assessed, and costs, for sixty days from the rendition of the judgment, by procuring one or more sufficient sureties, to enter into a recognizance in open court, acknowledging themselves to be bail for the fine and costs.

SEC. 146. Such sureties shall be approved by the clerk, and the entry of the recognizance shall be written immediately following the judgment, and signed by the bail, and shall have the same effect as a judgment, and if the fine or costs be not paid at the expiration of the sixty days, a joint execution shall issue against the defendant and the bail, and an execution against the body of the defendant, who shall be committed to jail, to be released as provided in this act, in committal for default to pay or secure the fine and costs.

SEC. 147. If any person ordered into custody until the fine and costs adjudged against him, shall not before the final adjournment of the court, pay or cause the payment of the same to be secured, the clerk of the court shall issue a warrant to the sheriff, commanding him to imprison such defendant in the county jail until such fine and costs are paid or secured, or until he has been imprisoned in such jail one day for every three dollars of such fine or costs, but execution may at any time issue against the property of the defendant, as in other cases.

SEC. 148. When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, and he shall execute it accordingly.

SEC. 149. In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and the execution of such punishment, the solitary shall precede the punishment by hard labor, unless the court shall otherwise order.

SEC. 150. If there shall be no penitentiary in the territory, or other prisons, the court may order the prisoner to be imprisoned in any county jail, if there be one, or any other place of confinement within the territory, at the expense of the territory; and if there is no county jail or county prison, the court may order the defendant, sentenced to the county jail, to be confined in the penitentiary, if there be one, or in any county jail, or other place of confinement in the territory, at the expense of the county in which the conviction was had.

SEC. 151. When a defendant is committed to jail on failure to pay any fine or costs, if there be no such jail, he shall, under the order of the county commissioners, work out the amount of such fine and costs, at the rate of three dollars for every day's labor, and if there be a county jail, he may elect so to do; and in case he shall so work out his fine and cost, no execution shall issue therefor. When any defendant is in the custody of the sheriff, by virtue of a sentence to imprisonment in the county jail, and there be no county jail in the county, he may under order of the county commissioners, cause such person to work out his unexpired term of imprisonment, in such manner as they may direct.

SEC. 152. When judgment of death is rendered, a warrant signed by the judge, and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day in which the judgment shall be executed; which shall not be less than thirty, nor more than ninety days from the time of judgment.

SEC. 153. The punishment of death prescribed by law must be inflicted by hanging by the neck.

SEC. 154. The sheriff shall return and file with the clerk, the warrant, with a statement of his doings thereon, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

SEC. 155. Whenever the time appointed for the execution of sentences on a prisoner shall have passed, either by reason of the sueing out of a writ of error, or the taking of an appeal, or from the escape of the prisoner, or from any other cause, the district court on the return of the judgment affirmed, or at any term of the court when the prisoner shall be brought before them, shall proceed to appoint a day for the carrying into effect of the sentence of death.

SEC. 156. The clerk of the district court shall make a final record of all the proceedings in a criminal prosecution, within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment, journal entries, pleadings, minutes of challenges to panel petit jurors, judgment, orders, or decision, and bill of exceptions.

XV. OF SUITS OF ERROR AND APPEALS.

SEC. 157. Re-examination may be had in the district and supreme court, within one and two years. When the writ may be sued out by defendant; when by the territory.

158. Appeals may also be taken as provided above, at the term of court when judgment was rendered.

159. How writs of error may be sued out and served.

160. Defendant entitled to a transcript of the record; what it shall be.

SEC. 161. The transcript, when sued out by the territory, what it shall be.
162. Transcript must be filed within sixty days; when the court may order a new transcript.
163. The supreme court may change a judgment or order. A new trial. The cause must be remanded to the court below. When judgment is affirmed, it must be executed.
164. Hearing of writs of error and appeal in supreme court.
165. Writ of error to stay execution.
166. Writ of error and appeal to operate as a supersedeas, in convictions for felony. Such party not to be allowed bail.
167. When several persons are tried under one indictment, each may appeal, or sue out a writ of error.
168. When a prisoner may be discharged; when detained.
169. No appeal to be dismissed for informality.
170. Opinions of supreme court must be in writing.
171. A transcript of an order or judgment, under seal, sufficient authority for the action of any court or officer.
172. Prosecutions, heretofore decided, may be re-examined.
173. Power of supreme court to make rules.

SEC. 157. Every final judgment, order, or decision of a district court, in a criminal prosecution, may be re-examined upon a writ of error, in the same court, for error in fact, within one year, and in the supreme court for error in law, within two years. The writ may be sued out by the defendant for all errors, and by the prosecuting attorney, when the error complained of is in quashing the indictment, or where a judgment is arrested by reason of the facts, as stated in the indictment, not constituting a crime or misdemeanor.

SEC. 158. Appeals may be taken from any final judgment, from which a writ of error would lie, by the defendant and prosecuting attorney, as provided in the preceding section, at the term of the court at which the judgment was rendered.

SEC. 159. Writs of error shall be sued out, and served in the same manner as notice in civil actions; and when sued out by the defendant, shall be served on the prosecuting attorney, and when sued out by the prosecuting attorney, on the defendant or his attorney, and returned as in civil actions.

SEC. 160. The defendant, on appeal or writ of error, shall be entitled to a transcript of the record, on payment of the fee therefor; and the transcript shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment, journal entries, pleadings, minutes of challenge to panel of petit jurors, judgment, order, decision, and bill of exceptions, certified to by the clerk.

SEC. 161. The transcript, when the writ of error is sued out, or the appeal taken by the prosecuting attorney, shall contain a copy of the indictment, and the order, decision, or judgment of the court from which the appeal is taken, or on which error is to be assigned.

SEC. 162. If the transcript shall not be filed within sixty days, the appeal or writ of error shall be dismissed, unless it shall appear that the plaintiff in error, or appellant, was not in fault; and the court may order a new transcript or further record, to be certified to, at any time.

Sec. 163. The supreme court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial.—In either case, the cause must be remanded to the court below, with proper instructions, together with the opinion of the court. But whenever any judgment is affirmed, the court may order it to be enforced by the proper officer.

Sec. 164. On hearing of writs of error, the supreme court shall examine all errors assigned; and on the hearing of appeals, shall examine all errors and mistakes excepted to at the time, whether waived by the strict rules of law or not; but the court shall consider all amendments which could have been made, as made, and shall give judgment without regard to technical errors or defects, or to exceptions which do not effect the substantial rights of the defendant.

Sec. 165. A writ of error or appeal may operate to stay proceedings, in a capital case, on the allowance of a judge of the supreme court, and after sufficient notice to the prosecuting attorney, of the time and place of making the application; and such order, certified to by the clerk of the district court of any county, under the seal thereof, when served on the sheriff, shall stay further proceedings in the case.

Sec. 166. In any case in which a party is convicted of a felony, and an appeal is taken, or a writ of error obtained, in behalf of said party, such appeal or writ of error shall operate as a supersedeas, in so far as to stay the execution of the sentence, if the same is to be enforced by imprisonment in the penitentiary; but in no case shall a party convicted of a felony be allowed the benefit of bail, but such party shall be confined in some county jail, or some other place of imprisonment.

Sec. 167. When several defendants are tried jointly, any one or more of them may take an appeal, or sue out a writ of error.

Sec. 168. When a judgment against the defendant is reversed, and it appears that no offense whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense, although defectively charged in the indictment, the supreme court, if the defendant is imprisoned, must direct the keeper of the place of confinement, to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the district court thereof; and such keeper shall be entitled to the usual fees therefor.

Sec. 169. No appeal or writ of error shall be dismissed for any informality or defect, in taking or sueing out the same, if such informality or defect shall be corrected within a reasonable time.

SEC. 170. All opinions of the supreme court, in criminal prosecutions, must be given in writing, and recorded in the order book.

SEC. 171. A transcript of any order or judgment, or both, of the supreme court, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served, to proceed according to its mandate.

SEC. 172. All criminal prosecutions, heretofore decided in this territory, may at any time within one year after the decision thereof, be re-examined on writs of error, and within two years after such decision, may be re-examined on appeal, according to the provisions of this act, and on such re-examinations, the court shall be governed by the law then in force.

SEC. 173. The supreme court shall have power to make any rules, not inconsistent with the provisions of this or other act.

XVI. MISCELLANEOUS PROVISIONS.

SEC. 174. Power of governor to grant pardons, respites, and reprieves, or commute sentence.
175. Recognizances, forfeited, to be certified to the district court. Prosecuting attorney may proceed against persons bound in such recognizances.
176. Recognizances not to be barred or defeated; defect in form not to arrest judgment; may be recorded after execution.
177. Person acquitted not liable for costs, except his own witnesses.
178. Bail as in civil cases.
179. Officer may break open a door or window to make an arrest.
180. Benefit of clergy abolished.
181. Laws heretofore in force, continued.

SEC. 174. Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life, at hard labor; and in all cases in which the governor is authorized to grant pardon, or commute sentence of death, he may, upon the petition of the person convicted, commute a sentence, or grant a pardon, upon such conditions, and with such restrictions, and under such limitations, as he may think proper; and he may issue his warrant to all proper officers, to carry into effect such pardon or commutation; which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves, from time to time, as he may think proper.

SEC. 175. All recognizances, taken and forfeited before any justice of the peace, or magistrate, shall be forthwith certified to the clerk of the district court of the county; and it shall be the duty of the prosecuting attorney to proceed at once, by action, against all the persons bound in such recognizances; and in all forfeited recognizances whatever, or such of them as he may elect to proceed against.

SEC. 176. No action, brought on any recognizance, given in any criminal proceeding whatever, shall be barred or defeated; nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, by reason of any such defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court, or before what justice, the party or witness was bound to appear; and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded.

SEC. 177. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of any officer, or for any charge for subsistence while he was in custody, except for the fees of witnesses summoned by him, and those of the officer summoning such witnesses.

SEC. 178. Bail shall, when required, justify as in civil cases.

SEC. 179. To make an arrest in criminal actions, the officer may break open any outer or inner door, or window, of a dwelling house or other building, or any other enclosure, if, after notice of his office and purpose, he be refused admittance.

SEC. 180. The plea of the benefit of clergy is abolished.

SEC. 181. The laws and usages of this territory, relative to pleading and practice, heretofore in force in criminal cases, and not inconsistent herewith, as far as the same may operate in aid hereof, or to supply any omitted case, are hereby continued in force.

Passed April 28, 1854.

CIVIL PRACTICE.

AN ACT TO REGULATE THE PRACTICE AND PROCEEDINGS IN CIVIL ACTIONS.

I. *Of the parties to civil actions.*
II. *Of venue.*
III. *Of change of venue.*
IV. *Manner of commencing civil actions.*
V. *Of pleadings—the complaint, answer, demurrer and reply.*

VI. *The time of filing pleadings.*
VII. *General rules of pleadings.*
VIII. *Of mistakes in pleadings and amendments.*
IX. *Of arrests.*
X. *Of the claim and delivery of personal property.*
XI. *Of injunction and restraining orders.*
XII. *Of attachments.*
XIII. *Of receives and deposits in courts.*
XIV. *Of the trial and judgment in civil actions, issues and the mode of trial.*
XV. *Of trials by jury.*
XVI. *Of the verdict.*
XVII. *Of trial by the court.*
XVIII. *Of trial by referee.*
XIX. *Of exceptions.*
XX. *Of new trial.*
XXI. *Of judgment in general.*
XXII. *Of judgment upon failure to answer.*
XXIII. *Of judgment by confession.*
XXIV. *Of the manner of taking and entering judgment.*
XXV. *Of judgment liens.*
XXVI. *Of execution.*
XXVII. *Of exemption.*
XXVIII. *Of adverse claims to property levied upon.*
XXIX. *Of the sale of property taken in execution.*
XXX. *Proceedings supplementary to the execution.*
XXXI. *Of evidence and the competency of witnesses.*
XXXII. *Of the manner of compelling the attendance of witnesses.*
XXXIII. *Of the examination of parties.*
XXXIV. *Of depositions.*
XXXV. *Of depositions taken out of the territory.*
XXXVI. *Of proceedings to perpetuate testimony.*
XXXVII. *Of provisions relating to records, documents, and other writings.*
XXXVIII. *Of writs of error and appeal.*
XXXIX. *Of set offs.*
XL. *Of costs in civil actions.*
XLI. *Of commissioner to sell real estate.*
XLII. *To recover the possession of real property, and to determine conflicting claims thereto.*
XLIII. *Partition of real estate.*
XLIV. *Of waste.*

XLV. *Of disputed land claims.*
XLVI. *Of nuisance.*
XLVII. *Of the foreclosure of mortgages.*
XLVIII. *Of ne exeat.*
XLIX. *Remedies of sureties against their principals.*
L. *Of habeas corpus.*
LI. *Of mandate and prohibition.*
LII. *Of information.*
LIII. *Miscellaneous provisons.*
LIV. *Of construction.*

I. OF THE PARTIES TO CIVIL ACTIONS.

SEC. 1. Common law forms abolished, and all distinction between law and equity.
2. Name of parties to a suit.
3. All suits to be brought in the name of the real party in interest, except in actions on notes.
4. Exception to the preceding section.
5. The husband may be joined in suit with the wife.
6. Infants must appear by guardian.
7. When and how a guardian may be appointed.
8. All persons interested in the suit must be joined as parties to the suit. Proviso.
9. When one or more parties may sue or defend for a number.
10. Persons severally liable to be sued at the option of the plaintiff.
11. No action shall abate when the cause survives.
12. When an order of substitution may issue.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all common law forms of action, and all distinctions between law and equity are hereby abolished, and hereafter there shall be in this territory but one form of action, to establish and enforce private rights, which shall be called a civil action.

SEC. 2. The party commencing the action, shall be known as the plaintiff, and the opposite party, the defendant.

SEC. 3. Every action shall be presented in the name of the real party in interest, except as is otherwise provided by law, but in all cases where the action is brought by an assignee, the same defense may be set up as could be done, were the suit brought in the name of the original party for the use of the assignee, except in cases where the action is upon a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration before due.

SEC. 4. An executor or administrator, or guardian of a minor or lunatic, a trustee of an express trust, or a person authorized by statute, may sue without joining the person for whose benefit the suit is prosecuted.

SEC. 5. When a married woman is a party, her husband must be joined with her except where the action is between her husband and herself, when she may sue and be sued alone.

SEC. 6. When an infant is a party, he shall appear by guardian, and if he has no guardian, or in the opinion of the court, the guardian is an improper person, the court shall appoint one to act.

SEC. 7. The guardian shall be appointed as follows:

1st. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of a relative or friend of the infant.

2d. When the infant is dependant, upon an application of the infant, if he be of the age of fourteen years, and apply on the first day of the return term of the summons; if he be under the age of fourteen, or neglect to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

SEC. 8. All persons interested in the cause of action, or necessary to the complete determination of the questions involved, shall, unless otherwise provided by law, be joined as plaintiffs, when their interest is in common with the party making the complaint; and as defendants, when their interest is adverse to the plaintiff: *Provided*, That where good cause exists, which shall be made to appear in the complaint, why a party who should be a plaintiff cannot, from a want of consent on his part or otherwise, be made such complainant, he shall be made a defendant.

SEC. 9. When the question is one of common or general interest to many persons, or where the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

SEC. 10. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them, be included in the same action, at the option of the plaintiff.

SEC. 11. No action shall abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue, but the court may, on motion, allow the action to be continued by or against his representatives or successor in interest.

SEC. 12. A defendant against whom an action is pending upon a contract, or for specific, real or personal property, may, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person, and the adverse party apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property, or its value, to such person as the court may direct; and the court may, in its discretion, make the order.

II. OF VENUE.

SEC. 13. What actions must be commenced in the county where the subject of the action is situated.
14. What actions must be tried in the county where the cause of action arose.
15. All other cases to be tried where summons is served; proviso.

SEC. 13. Actions for the following causes shall be commenced in the county in which the subject of the action, or some part thereof, is situated.

1st. For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage, on or for the determination of all questions affecting the title, or for any injuries to real property.

2d. All questions involving the rights to the possession or title to any specific article of personal property; in which last mentioned class of cases, damages may also be awarded for the detention and for injury to such personal property.

SEC. 14. Actions for the following causes, shall be tried in the county where the cause, or some part thereof, arose:

1st. For the recovery of a penalty or forfeiture imposed by statute; except that when it is imposed for an offense committed on a lake, river or other body of water, situate in two or more counties, the action may be brought in any county bordering on such lake, river or stream, and opposite to the place where the offense was committed.

2d. Against a public officer or person specially appointed to execute his duties for an act done him in virtue of his office; or against a person, who by his command, or in his aid, shall do any thing touching the duties of such officer.

SEC. 15. In all other cases the action shall be tried in the county in which the defendant may be served with process: *Provided*, That in cases where there are two or more persons jointly liable, action may be commenced in the county where one or more of the defendants may be found, and process may issue for the other defendants to any other county in the territory: *Provided*, also, that nothing contained in any of the foregoing sections shall be so construed as to prevent a change in the place of trial as may be provided by law.

III. OF CHANGE OF VENUE.

SEC. 16. When a change of venue may be had.
17. Change of venue may be granted in vacation.
Neither party entitled to a second change of venue.
Escape in certain cases.

Sec. 18. When change of venue is ordered in vacation, affidavit and order for change to be filed.
19. When change of venue is made duties of the clerk in relation thereto.
20. The costs of a change of veneue to be paid by the party applying, before papers are transferred; proviso.
21. When an order for a change of venue may be annulled.
22. When a transcript has been filed, the case to be proceeded with as if it originated in that court.

Sec. 16. A change of venue, or the place of trial, may be had on the application of either of the parties in the following cases:

1st. When the county in which the action is pending shall be a party thereto, or interested therein;

2d. When the judge shall be interested in the action, or connected by blood or affinity with any person so interested, nearer than in the fourth degree;

3d. When the party applying for such change shall make and file an affidavit, stating that the judge or the inhabitants of the county are so prejudiced against him, that he cannot expect an impartial trial, and also, that the application for the change of venue is not made for the purpose of delay;

4th. When the county designated in the complaint is not the proper county, and the defendant appears and moves for the change to the proper county.

Sec. 17. An application for the change of venue may be made either to the court, in term time, or to a judge thereof, in vacation, and the change shall be to the most convenient county, to which there shall be no exception of the character of those above enumerated; but neither party shall be entitled to more than one change of venue, except for causes not in existence, or not known to the party, when the first change may have been taken: *Provided*, That where an application for a change of venue is made in vacation, reasonable notice shall be given to the adverse party, or his attorney, of the time and place, when and where such application shall be made.

Sec. 18. If the change of venue be ordered by the judge in vacation, he shall immediately transmit to the clerk of the court where the cause is pending, the affidavit, if any, and the order for the change, who shall file the same in his office.

Sec. 19. In such cases, as well as where the order shall be made in open court, the clerk shall forthwith transmit to the clerk of the proper court a transcript of the record and proceedings in such cause, with all the original papers filed therein, having first made out and filed in his own office, authenticated copies of all such original papers.

Sec. 20. The costs of such change of venue shall be paid by the applicant therefor, and not taxed as part of the costs of the case; and the clerk shall require payment of such costs before the transcript and papers shall be transmitted as aforesaid. When the application for a change of venue is made at the term of court at which the cause stands for trial, the fees and cost of such witnesses as are in attendance upon a subpœna, shall be taxed and paid as a part of the costs of the change of venue: *Provided*, That where a change is allowed at a term after an unsuccessful trial of said cause, or where the party, ten days or more, prior to said term, or before the issuing or service of any subpœna of the opposite party, has given to the said party notice of his intention to apply for such change, it shall be discretionary with said court or judge to order what portion if any, of such costs and fees shall be taxed as a part of the costs of changing the venue.

Sec. 21. If such transcript of the record and proceedings be not transmitted to the clerk of the proper court, within twenty days after the order for the change of venue shall be filed, (unless a longer time be allowed by the judge,) such order may, on motion of the opposite party, be annulled by the court or judge who made the same, and in such case, no other change of venue shall be allowed to such applicant.

Sec. 22. Upon filing such transcript and papers in the office of the clerk of the court to which the same were certified, the cause shall be docketed, and the same proceedings had as though it had originated in that court.

IV. THE MANNER OF COMMENCING CIVIL ACTIONS.

Sec. 23. How civil actions may be commenced.
24. Clerk's duty when complaint is filed.
25. When summons returnable.
26. What the summons shall be.
27. Summons, by whom served, and return thereof.
28. How a summons may be served.
29. When a service of a summons may be made by publication.
30. How service of a summons may be made by publication.
31. Rights of defendant when service is made by publication.
32. When summons may be re-issued.
33. When one of the parties to a suit cannot be served, the others may be proceeded against.
34. What shall be proof of the service of a summons.
35. The court to control proceedings after service of summons.

Sec. 23. Civil actions, in the several district courts of this territory, shall be commenced by the filing the complaint with the clerk of the court, and the issuing of a summons thereon, except as hereinafter provided.

Sec. 24. The clerk shall file the complaint in his office, endorsing thereon the day, month, and year when it is filed, and shall forthwith issue, under the seal of the court, summons against all the defendants named, in the complaint: *Provided*, That if the defendants reside in several counties, a summons shall issue to each county in which any of the defendants reside or may be found.

SEC. 25. The summons shall be made returnable on the first day of the next term of the court, which shall commence twenty days or more after it is issued.

SEC. 26. The summons shall require the defendant, if served within the county, to appear and file his answer with the clerk within fifteen days after he is served with process, and if served in any other county, within twenty days after such service, or that judgment by default will be taken against him: *Provided*, That where, for good and sufficient cause, the defendant has been unable to file his answer within the time above specified, the court, in its discretion, may allow the answer to be filed at any subsequent time.

SEC. 27. In all cases, except where the service is made by publication, as is hereinafter provided for, the summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person other than the plaintiff, specially appointed by him, or by a person appointed by the judge of the court where the action is brought. Such appointments shall, prior to the service, be made in writing, endorsed upon the summons, and signed by the party making them. The summons shall be returned to the office of the clerk from which it issued, with the return of the sheriff, or his deputy endorsed thereon, or if served by a person specially appointed, his affidavit. And when issued to, or served in a county other than that in which the action is pending, it may be sent and returned by mail.

SEC. 28. The summons shall be served by delivering a copy thereof, together with a copy of the complaint, certified by the clerk as follows:

1st. If the suit be against a corporation, to the president or other head of the corporation, secretary, cashier, or managing agent thereof;

2d. If against any county in this territory, to the county auditor;

3d. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian; or if there be none within this territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed;

4th. If against a person for whom a guardian has been appointed for any cause, to such guardian and to the defendant personally;

5th. In all other cases to the defendant personally, or if he be not found, to some suitable person of the family, above the age of fourteen years, at the dwelling house or usual place of abode of the defendant.

SEC. 29. When service of the summons cannot be made as prescribed in the last preceding section, and the defendant, after due diligence, cannot be found within the territory, and when that fact appears by affidavit to the satisfaction of the court, or judge thereof, and it in like manner appears that a cause of action exists against the defendant, where actual personal notice is not required by law, or that he is a proper party to an action relating to real property in such territory, such court or judge, may grant an order that the service be made by publication.

SEC. 30. The order shall direct the publication to be made in a newspaper published in the county where the action is brought, and if there be no newspaper published in the county, then in a newspaper or newspapers, to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks; or, in case the defendant be absent from, or residing out of this territory, not less than once a week for three months. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the defendant at his place of residence, unless it shall appear that such residence is not known to, and cannot be ascertained with reasonable diligence, by the party making the application. When publication is ordered, personal service of a copy of the summons and complaint, out of the territory, shall be equivalent to publication and deposit in the post office. In either case, the service of the summons shall be deemed complete at the expiration of the time prescribed in the order for publication.

SEC. 31. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action; and except in an action for divorce, the defendant against whom publication is ordered, or his representatives may in like manner upon good cause shown, be allowed to defend after judgment, and within one year after the rendition of such judgment, on such terms as may be just, and if the defense be successful, and the judgment, or any part thereof, have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct: *Provided,* That in all cases before the defendant shall be allowed to defend, he shall make an affidavit that he has, as he believes, a good defense to the action, or to some part thereof.

SEC. 32. Whenever it shall appear by the return of the sheriff, or his deputy, or the person appointed to serve a summons, that he has not served it upon the defendants as prescribed in the twenty-eighth section, the clerk shall, at the request of the plaintiffs, issue another summons, and so on till service be had; or the plaintiff may proceed, by publication in the manner before stated, at his election.

SEC. 33. When the action is against two or more defendants upon a joint contract or liability, and one or more cannot be served with summons, the plaintiff, unless for good cause the court shall otherwise direct, may proceed to judgment against the defendant served, and at any time thereafter, while such judgment remains unsatisfied, the clerk, on written application of the party interested, or his attorney, shall issue a summons against the defendant not served, and upon the service thereof, with a copy of the complaint, upon such defendant, the same proceedings shall be had as though he had been originally served with the summons. Where the action is against the defendants severally and jointly, or severally liable, he may proceed against the defendants served, in the same manner as though they were the only defendants.

Sec. 34. Proof of the service of the summons and complaint shall be as follows:

1st. If served by the sheriff or his deputy, the return of such sheriff or deputy; or,

2d. If by any other person, his affidavit thereof; or,

3d. In case of publication, the affidavit of the printer, or his foreman or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons and complaint in the post office, if the same shall have been deposited; or,

4th. The written admission of the defendant. In case of service, otherwise than by publication, the certificate, affidavit, or admission, must state the time, place, and manner of service.

Sec. 35. From the time of the service of the summons and complaint in a civil action, the court shall be deemed, to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.

V. OF PLEADINGS—THE COMPLAINT, ANSWER, DEMURRER, AND REPLY.

Sec. 36. All forms of pleadings, except those prescribed by statute, abolished.
37. Plaintiff's pleadings. Defendant's pleadings.
38. First pleading must be the complaint.
39. What the complaint shall contain.
40. When the defendant may demur.
41. What the demurrer shall specify.
42. When objections may be taken by answer.
43. When defendant may be deemed to have waived all objections.
44. What the answer shall contain.
45. The defendant may set forth as many answers as he may have.
46. Defendant may demur and answer.
47. Sham pleadings may be stricken out.
48. When the plaintiff may reply, and how.
49. When judgment and a writ of damages may issue.
50. When defendant may demur to a reply.

Sec. 36. All the forms of pleading, heretofore existing in civil actions, inconsistent with the provisions of this act, are abolished; and hereafter the forms of pleading, and the rules by which the sufficiency of the pleadings is to be determined, shall be those prescribed by statute.

SEC. 37. The only pleadings on the part of the plaintiff, shall be:

1st, the complaint; 2d, the demurrer; or 3d, the reply.

And, on the part of the defendant:

1st, the demurrer, or 2d, the answer.

SEC. 38. The first pleading on the part of the plaintiff, shall be the complaint.

SEC. 39. The complaint shall contain:

1. The title of the cause, specifying the name of the court, and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant.

2. A plain and concise statement of the facts constituting the cause of action, without unnecessary repetition.

3. A demand for the relief which the plaintiff claims; if the recovery of money, or damages be demanded, the amount thereof shall be stated.

SEC. 40. The defendant may demur to the complaint, when it shall appear upon the face thereof, either,

1. That the court has no jurisdiction; or
2. That the plaintiff has no legal capacity to sue; or
3. That there is another action pending between the same parties, for the same cause; or
4. That there is a defect of parties, plaintiff or defendant; or
5. That several causes of action have been improperly united; or
6. That the complaint does not state facts sufficient to constitute a cause of action.

SEC. 41. The demurrer shall distinctly specify the grounds of objection to the complaint; unless it does so, it may be disregarded; it may be taken to the whole complaint, or to any of the alleged causes of action stated therein.

SEC. 42. When any of the matters enumerated in section forty, do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 43. If no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 44. The answer of the defendant shall contain:

1. A specific denial of each material allegation of the complaint, controverted by the defendant, according to his knowledge, information, or

belief, or of any knowledge or information thereof, sufficient to form a belief.

2. A plain, concise statement of any new matter, constituting a defence or set-off, without unnecessary repetition.

SEC. 45. The defendant may set forth, by answer, as many defences as he may have. They shall each be separately stated, and refer to the causes of action which they are intended to answer, in any manner by which they may be intelligibly distinguished.

SEC. 46. The defendant may demur to one or more of several causes of actions, stated in the complaint, and answer the residue.

SEC. 47. Sham and irrelevant pleadings may be stricken out, on motion, and upon such terms as the court may in its discretion impose.

SEC. 48. When the answer contains new matter, constituting a defense or set-off, the plaintiff may reply to such new matter, denying specifically each allegation, controverted by him according to his knowledge or information thereof, sufficient to form a belief; and he may allege, in a plain and concise manner, without unnecessary repetition, any new matter, not inconsistent with the complaint, constituting a defense to such new matter, in the answer; or, he may demur to the same for insufficiency, stating in his demurrer the grounds thereof, and the plaintiff may demur to one or more of several defenses or set-offs in the answer, and reply to the residue.

SEC. 49. If the answer contain a statement of new matter, constituting a defense, and the plaintiff fails to reply or demur thereto within the time prescribed by law, the defendant may move in court for such judgment as he shall be entitled to, upon such statement, and, if the case require it, a writ of damages may be issued.

SEC. 50. If a reply of the plaintiff, to any defense set up by the answer of the defendant, be insufficient, the defendant may demur thereto, and shall state the grounds thereof.

VI. TIME OF FILING PLEADINGS.

SEC. 51. The answer or demurrer to be filed, when. In cases where notice is given by publication, when. The reply or demurrer, when.
52. The court may allow pleadings to be filed at any time.

SEC. 51. The answer or demurrer of defendant shall be filed within the time prescribed in the summons, in all cases where personal service is made.

In cases where notice is given by publication, within fifteen days after the publication is completed.

The reply or demurrer of the plaintiff to the answer, within fifteen days after the time for filing the answer has transpired, if the answer has been filed within the rule.

The demurrer to the reply, on or before the second day of the term at which the cause stands for trial.

In every case where the time herein allowed for filing the reply to the answer, shall have elapsed, prior to the commencement of any term, the cause, if the plaintiff shall demand a trial, shall stand for trial at that term, subject to the right of either party to a continuance, as in other cases.

SEC. 52. In all cases the court, for good cause shown, shall allow pleadings to be filed at any time before the trial, upon such terms as the court shall judge proper.

VII. GENERAL RULES OF PLEADING.

SEC. 53. Pleadings must be signed and verified.
54. Verification of pleadings, how made, and by whom.
55. A copy of the instrument, which is the cause of action, to be furnished.—The court may order a bill of particulars.
56. The construction of statutes.
57. Irrelevant pleadings.
58. The facts conferring jurisdiction not necessary to be stated, when judgment is referred to in a pleading.
59. Facts not necessary to be stated in pleadings.
60. Reference to statutes in pleadings.
61. Facts to be stated in an action for libel.
62. Defendant may plead in actions for libel.
63. Pleadings in an action to recover property.
64. When several causes of action may be united in the same complaint.
65. A material allegation.

SEC. 53. Every pleading shall be subscribed by the party, or his attorney, and, except a demurrer, shall also be verified by affidavit, as set forth in the next section.

SEC. 54. The verification shall be to the effect that the same is true, except as to matters stated on information, and as to those matters, that he believes them to be true. The affidavit shall be made by the party, or if there be several parties united in interest, and pleading jointly, by one of such parties, if he be within the county in which the action is brought, and capable of making the affidavit; if he be not within the county, or from any cause be unable to verify the same, it may be made by the agent, attorney, or any other person having a knowledge of the facts; and when the affidavit shall be made by another than the party, he shall set forth in it his knowledge of the grounds of his belief, and the reason why it is not made by the party. When a corporation is a party, verification may be made by any officer thereof; and when the territory, or any officer thereof, in its behalf, is a party, the verification may be made by any person acquainted with the facts. No pleading shall be used, in a criminal prosecution, against the party, as proof of a fact alleged in such pleading.

SEC. 55. It shall not be necessary for a party to set forth in a pleading, a copy of the instrument of writing, or the items of an account therein alleged; but unless he file a verified copy thereof, with such pleading, and serve the same on the adverse party, he shall, within ten days after a demand thereof, in writing, deliver to the adverse party a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or a judge thereof, may order a further account, when the one delivered is defective, and the court may, in all cases, order a bill of particulars, of the claim of either party, to be furnished.

SEC. 56. In the construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantiate justice between the parties.

SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby; and when the allegations of a pleading are so indefinite or uncertain, that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain, by amendment, or may dismiss the same.

SEC. 58. In pleading a judgment or other determination of a court or office of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.

SEC. 59. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally, that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance.

SEC. 60. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

SEC. 61. In an action for libel or slander, it shall not be necessary to state in the complaint any intrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state, generally, that the same was published or spoken, concerning the plaintiff; and if such allegation be controverted, the plaintiff shall be bound to establish, on trial, that it was so published or spoken.

SEC. 62. In the actions mentioned in the last section, the defendant may in his answer allege both the truth of the matter, charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

SEC. 63. In an action to recover the possession of property distrained, doing damage, an answer that the defendant, or person by whose command he acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing the damage thereon, shall be good, without setting forth the title to such real property.

SEC. 64. The plaintiff may unite several causes of action in the same complaint, when they shall arise out of

1st. Contract, express or implied; or

2d. Injuries, with or without force, to the person; or

3d. Injuries, with or without force, to property; or

4th. Injuries to character; or

5th. Claims to recover real property, or any interest therein, with or without damages for withholding thereof, and the rents and profits of the same; or

6th. Claims to recover personal property, or any interest therein, with or without damages for the withholding thereof; or

7th. Claims against a trustee, by virtue of a contract, or by operation of law.

But the causes of action, so united, must all belong to one only of these classes, and must effect all the parties to the action, and not require different places of trial, and must be separately stated.

SEC. 65. A material allegation in a pleading, is one essential to the claim or defence, and which could not be stricken from the pleading without leaving it insufficient.

VIII. MISTAKES IN PLEADINGS AND AMENDMENTS.

SEC. 66. Variance in pleading and proof, how corrected.
67. When an immediate amendment may be ordered.
68. A failure of proof.
69. How amendments may be made, and when.
70. When the name of the defendant is not known, the pleading may be amended.
71. Errors and defects in pleadings.
72. Supplemental pleadings.

SEC. 66. No variance between the allegation in a pleading and the proof shall be deemed material, unless it have actually misled the adverse party, to his prejudice, in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended, upon such terms as shall be just.

SEC. 67. When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

SEC. 68. When, however, the allegation of the cause of action or defense, to which the proof is directed, is not proved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

SEC. 69. At any time before judgment, the court, on motion, may authorize any of the pleadings to be amended, on such terms as shall be deemed reasonable, and at any time before the close of the next term of the court, after the term in which any judgment, order, or other proceeding is had, the court, on motion, and upon good cause shown, after reasonable notice to the adverse party, or his attorney, may relieve a party from such judgment, order, proceeding, taken against him, through his mistake, inadvertence, surprise, or excusable neglect, and supply an omission in any proceedings.

SEC. 70. When the plaintiff shall be ignorant of the name of the defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

SEC. 71. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings, which shall not effect the substantial rights of the adverse party; and no judgment shall be reversed or effected by reason of such error or defect.

SEC. 72. The court may, on motion, allow supplemental pleadings, showing facts which occurred after the former pleadings were filed.

IX. OF ARRESTS.

SEC. 73. No arrest to be made in civil action, except on an order of court.
74. When, and for what causes, a defendant may be arrested.
75. Proof must be given before warrant issues.
76. The amount must be specified in the warrant.
77. What the clerk shall require before issuing a warrant for arrest.
78. An order for arrest may be vacated. Proceedings when vacated.
79. Complaint must be filed and served as in cases of a summons.
80. Defendant must have a copy of the warrant.
81. Execution of a warrant. Custody of prisoner.

SEC. 82. Bond of defendant, how and when given, &c.
83. What the warrant shall state.
84. How and when a defendant may be surrendered.
85. The bail may arrest the defendant.
86. The bail may be proceeded against by action.
87. How the bail may be exhonerated.
88. The return of an order for arrest.
89. Proceedings when bail is insufficient.
90. The qualification of bail.
91. Justification of bail.
92. When bail is found sufficient duty of the justice.
93. Defendant may deposit for bail.
94. The sheriff required to pay over the deposit.
95. When money deposited may be refunded.
96. Disposition of fund deposited for bail.
97. Sheriff to be liable; may give bail.
98. Proceedings against a sheriff liable.
99. Bail liable to the sheriff.

SEC. 73. No person shall be arrested or held to bail in any civil action except upon the order of the court where the action is brought, or a judge of the supreme court.

SEC. 74. The defendant may be arrested as is hereinafter provided in the following cases and for the following causes only:

1st. When the action is upon a contract to recover damages, and the defendant has money or property and is about to abscond from the territory with, or conceal or dispose of the same, with intent to defraud his creditors.

2. Where the action is to recover possession of specific articles of personal property, or any instrument of writing, and the defendant conceals, or is about to conceal, destroy or dispose of the subject matter of the suit with intent to defraud the plaintiff.

3. Where the action is to prevent threatened injury to, or destruction of property in which the party bringing the action has some right, interest or title which will be impaired or destroyed by such injury or destruction, and the danger is imminent that such property will be destroyed, or its value impaired to the injury of the plaintiff.

4. On the final judgment or order of any court in this territory while the same remains in force, when the defendant, having no property subject to execution, or not sufficient to satisfy such judgment, has money which he ought to apply in payment upon such judgment, and which he refuses to apply with intent to defraud the plaintiff, or where he refuses to comply with a legal order of the court, with intent to defraud the plaintiff, or where any one or more of the causes exist for which an arrest is allowed in the first class of cases mentioned in this section.

SEC. 75. The court or judge making the order, shall first be satisfied by the affidavit of the party, and other proof, or by other proof that the case is one in which an arrest is provided for in section seventy-four, and that one or more of the prescribed causes exist, which proof shall be in writing, and, together with the order, be filed with the clerk before he shall issue any warrant for the arrest.

SEC. 76. The court or judge making the order, shall, in all cases, specify therein the amount in which the defendant shall be held to bail, which shall, in no case exceed the demand of the plaintiff, and one hundred dollars in addition thereto, which amount the clerk shall endorse upon the writ, and the court shall also in the order, fix the amount of the bond to be given by the plaintiff as provided in the next succeeding section, which amount shall, in no case, be less than one hundred dollars.

SEC. 77. Before any clerk shall issue a warrant for the arrest of the defendant, he shall require the plaintiff to place on file in his office a copy of the order granting the warrant, unless the same was made in open court, and appears in the minutes, the original affidavit and proofs upon which the order was made, and a bond on behalf of the plaintiff, in such an amount as the court or judge shall have fixed in the order, with sureties to the satisfaction of the clerk, conditioned to pay to the defendant all damages which he shall suffer, and all expenses he shall incur by reason of such arrest or imprisonment, if the order shall be vacated in the manner provided for in the next succeeding section, or if the plaintiff fail to recover in his action.

SEC. 78. The defendant may, on motion, apply to the court to vacate the order of arrest, on the ground of the insufficiency of the proof, or he may show that the facts alleged, upon which the order issued, are untrue, or he may apply to have the amount of bail reduced. If the court, upon any such motion, shall vacate the order, the defendant shall be discharged from the arrest, and any bond he may have given shall be cancelled, but the action, unless dismissed for other cause, shall be conducted in the same manner as in cases where a summons issues.

SEC. 79. When an order of arrest is granted prior to the filing of the complaint, the warrant shall not issue until the complaint is filed with the clerk. And a copy of said complaint shall be served on the defendant, with the warrant, as in case of a summons; but an order of arrest may be granted at any time after the action is commenced, and before judgment is satisfied, when the party seeking the order shall comply with the preceding provisions in regard to arrests.

SEC. 80. The warrant must be delivered to the sheriff, who, upon arresting the defendant, must deliver to him a copy thereof.

SEC. 81. The sheriff shall execute the warrant by arresting the defendant and keeping him in custody until discharged by law. And the plaintiff, in first instance, shall be liable for the sheriff's fees, for the food and maintenance of any person under arrest, which, if required by the sheriff, shall be paid weekly in advance. And such fees, so paid, shall be added to the costs taxed or accruing in the case, and be collected as other costs. And if the plaintiff shall neglect to pay such fees, for three days after a demand in writing, upon the plaintiff or his attorney, for payment, the sheriff may discharge the defendant out of custody.

SEC. 82. The defendant may give bail by causing a bond to be executed by two or more sufficient bails, stating their places of residence and occupations, conditioned that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment rendered therein, or if he be arrested for the cause mentioned in the second subdivision of section seventy-four, it shall be further conditioned, that the specific article of property or instrument of writing which is the subject matter of the writ, shall be forthcoming to abide any order which shall be made therein, or if he be arrested for the cause mentioned in the third subdivision of said section, it shall be farther conditioned that he will not commit the injury or destruction alleged to be threatened in the affidavit or proofs on which the arrest is ordered.

SEC. 83. The warrant shall, in all cases, contain a short statement of the alleged cause for which the order was granted, and also the amount for which bail is required.

SEC. 84. At any time before a failure to comply with their bond, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested in the following manner:

1st. A certified copy of the bail bond shall be delivered to the sheriff, who shall retain the defendant in his custody, thereon, as upon an order of arrest, and by a certificate in writing, acknowledge the surrender.

2. Upon the production of a copy of the bail bond and sheriff's certificate, a judge of the district court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on such application, they shall be exonerated accordingly; but this section does not apply to an arrest for the cause mentioned in the third subdivison of section seventy-four.

SEC. 85. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally discharged, may themselves arrest him, or by a written authority, indorsed on a certified copy of the bond, may empower any person of suitable age and discretion to do so.

SEC. 86. In case of failure to comply with the condition of the bond, the bail can be proceeded against by action only.

SEC. 87. The bail may be exonerated either by the death of the defendant, or his imprisonment in a penitentiary, or by his legal discharge, from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution thereof, within twenty days after the commencement of the action against the bail, or within such further time as may he granted by the court.

SEC. 88. Within the time limited for that purpose, the sheriff must deliver the order of arrest to the clerk, with his return indorsed thereon, and the bond of the bail, or a copy thereof; the plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he must be deemed to have accepted it, and the sheriff shall be exonerated from liability.

SEC. 89. On the receipt of the notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same or other bail, (specifying the places of residence and occupations of the latter) before a judge of the court, or justice of the peace at a specified time and place, the time to be not less than five, nor more than ten days thereafter; in case other bail be given, there must be a new bond in the form prescribed in section eighty-two.

SEC. 90. The qualifications of bail shall be as follows:

1st. Each of them shall be a resident of the territory; but no counsellor or attorney at law, sheriff, clerk of the district court, or other officer of such court, shall be permitted to become bail in any action.

2d. Each of the bail shall be worth the amount specified in the order of arrest, or the amount to which the order may be reduced as provided in this act, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge or justice, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 91. For the purpose of justification, each of the bail must attend before the judge or justice of the peace, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency in such manner as the judge or justice of the peace in his discretion may think proper; the examination must be reduced to writing, and subscribed by the bail if required by the plaintiff.

SEC. 92. If the judge or justice find the bail sufficient, he shall annex the examination to the bond, indorse his allowance thereon, and cause them to be filed with the clerk; and the sheriff shall thereupon be exonerated from liability.

SEC. 93. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order; the sheriff must thereupon give the defendent a certificate of deposit, and the defendant shall be discharged out of custody.

SEC. 94. The sheriff shall, within ten days after the deposit, pay the same into court, and take from the officer receiving the same, two certificates of such payment, the one of which he must deliver to the plaintiff and the other to the defendant; for any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited, as in other cases of delinquency.

SEC. 95. If money be deposited as provided in the last two sections, bail may be given and justified, upon notice as herein before provided, at any time before judgment, and thereupon, the judge, before whom the justification is had, shall direct in the order of allowance, that the money deposited, be refunded by the sheriff or clerk to the defendant, and it shall be refunded accordingly.

SEC. 96. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment, refund the surplus, if any, to the defendant; if the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

SEC. 97. If, after being arrested, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the sheriff shall himself be liable as bail, but he may discharge himself from such liability, by the giving and justification of bail, as is herein before provided, may be done by the defendant, at any time before process against the person of the defendant, to enforce an order or judgment in the action.

SEC. 98. If a judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied in whole or in part, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency.

SEC. 99. The bail taken on the arrest, shall, unless they justify, or other bail be given, or justified, be liable to the sheriff by action for the damages which he may sustain by reason of such omission.

X. CLAIM AND DELIVERY OF PERSONAL PROPERTY.

SEC. 100. Plaintiff may claim the delivery of personal property.
101. When delivery is claimed, what affidavit must be made.
102. When delivery may be made, and proceedings thereafter.
103. When exceptions may be had to sureties on a bond to be taken.
104. Defendant may retain property on giving bond.
105. Defendant's sureties to justify.
106. The qualification of sureties.

SEC. 107. How property concealed may be taken.
108. Duty of sheriff when property is taken.
109. The claim of a third party—how established.
110. Sheriff to make return, &c.

SEC. 100. The plaintiff in an action to recover the possession of personal property, may at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property as herein provided.

SEC. 101. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

1st. That the plaintiff is the owner of the property claimed (particularly describing it) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.

2d. That the property is wrongfully detained by the defendant.

3d. That the same has not been taken for a tax, assessment or fine pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized that it is by law exempt from such seizure; and

4th. The actual value of the property.

SEC. 102. Upon the receipt of the affidavit and a bond to the defendant, executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action, for the return of property, as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit and bond, by delivering the same to him personally, if he can be found, or his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the post office, directed to the defendant, at the post office nearest his place of residence.

SEC. 103. The defendant may, within three days after the service of a copy of the affidavit and bond, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either waived, as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

SEC. 104. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a bond, executed by one or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and nine.

SEC. 105. The defendant's sureties, upon a notice to the plaintiff or his attorney of not less than two or more than six days, shall justify in the same manner as upon bail upon arrest; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed, or expressly waived, and may retain the property until that time; but if they or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

SEC. 106. The qualification of sureties and their justification, shall be as prescribed in respect to bail upon an order of arrest.

SEC. 107. If the property or any part thereof, be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

SEC. 108. When the sheriff shall have taken property as is herein provided, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 109. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim by a bond, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution and freeholders or householders of the county, and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

Sec. 110. The sheriff shall file the affidavit with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein; or, if the clerk reside in another county, shall mail or forward the same within that time.

XI. OF INJUNCTION AND RESTRAINING ORDERS.

Sec. 111. Injunction and restraining orders, by whom granted.
112. When an injunction may be granted.
113. At what time an injunction may be granted.
114. Both parties to be heard, except in certain cases.
115. Parties may read affidavits on hearing.
116. Terms may be imposed with an injunction.
117. Bond to be given before injunction is granted.
118. When an injunction is granted after a restraining order, a second bond not necessary.
119. A writ of injunction not necessary.
120. The plaintiff required to endorse a release upon application to stay proceedings.
121. Who an injunction shall bind.
122. When it is necessary to serve an order of injunction.
'123. Money collected on a judgment after injunction, subject to the order of the court.
124. An attachment for contempt; when granted; by whom issued and served.
125. Proceedings on an attachment for contempt.
126. Person arrested for contempt to give bond.
127. Motions to dissolve or modify may be made.
128. When and what damages a court may award after an injunction is dissolved.
129. When an injunction is dissolved, what the damages shall include.
130. Injunction being dissolved the court may reinstate the same.

Sec. 111. Restraining orders and injunction may be granted by the district court in term time, or by any judge of the supreme court in vacation.

Sec. 112. Where it appears by the complaint, that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation would produce great injury to the plaintiff, or when during the litigation it appears that the defendant is doing, or threatens, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual, or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens, or is about to remove or dispose of his property, with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property.

SEC. 113. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment in that proceeding.

SEC. 114. No injunction shall be granted until it shall appear to the court or judge granting it, that some one or more of the opposite party concerned, has had reasonable notice of the time and place of making the application, except that in cases of emergency, to be shown in the complaint, the court may grant a restraining order, until notice can be given, and hearing thereon.

SEC. 115. On the hearing of an application for an injunction, each party may read affidavits.

SEC. 116. Upon the granting or continuing an injunction, such terms and conditions may be imposed upon the party obtaining it, as may be deemed equitable.

SEC. 117. No injunction or restraining order shall be granted until the party asking it shall enter into bond, in such a sum as shall be fixed by the court or judge granting the order, with surety to the satisfaction of the clerk of the district court, to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. The sureties shall, if required by the clerk, justify in like manner as bail upon an arrest, and until they so justify, the clerk shall be responsible for their sufficiency.

SEC. 118. When an injunction is granted upon the hearing, after a temporary restraining order, the plaintiff shall not be required to enter into a second bond, unless the former shall be deemed insufficient, but the plaintiff and his surety, shall remain liable upon his original bond.

SEC. 119. It shall not be necessary to issue a writ of injunction, but the clerk shall issue a copy of the order of injunction duly certified by him, which shall be forthwith served by delivering the same to the adverse party.

SEC. 120. In application to stay proceedings after judgment, the plaintiff shall indorse upon his complaint, a release of errors in the judgment whenever required to do so by the judge or court.

SEC. 121. An order of injunction shall bind every person and officer restrained from the time he is informed thereof.

SEC. 122. When notice of the application for an injunction has been served upon the adverse party, it shall not be necessary to serve the order upon him, but he shall be bound by the injunction as soon as the bond required of the plaintiff is executed and delivered to the proper officer.

SEC. 123. Money collected upon a judgment afterward enjoined, remaining in the hands of the collecting officer, shall be paid to the clerk of the court granting the injunctions, subject to the order of the court.

SEC. 124. Whenever it shall appear to any court granting an order of injunction, or judge thereof in vacation, by affidavit that any person has wilfully disobeyed the order after notice thereof, such court or judge shall award an attachment for contempt against the party charged, or a rule to show cause why it should not issue. The attachment or rule shall be issued by the clerk of the court and directed to the sheriff, and shall be served by him.

SEC. 125. The attachment for contempt shall be immediately served by arresting the party charged, and bringing him into court, if in session, to be dealt with as in other cases of contempt, and the court shall also take all necessary measures to secure and indemnify the plaintiff against damages in the premises.

SEC. 126. If the court is not in session, the officer making the arrest shall cause the person to enter into a bond, with surety to be approved by the officer, conditioned that he personally appear in open court on the first day of the next term thereof, to answer such contempt, and that he will pay to the plaintiff all his damages and costs occasioned by the breach of the order, and in default thereof, he shall be committed to the jail of the county until he shall enter into such bond with surety, or be otherwise legally discharged.

SEC. 127. Motions to dissolve or modify injunctions may be made in open court at any time after the adverse party has had reasonable notice.

SEC. 128. When an injunction to stay proceedings after judgment for debt or damages, shall be dissolved, the court shall award such damages not exceeding ten per cent. on the judgment, as the court may deem right, against the party in whose favor the injunction issued.

SEC. 129. If an injunction to stay proceedings after verdict or judgment in an action for the recovery of real estate, or the possession thereof be dissolved, the damages assessed against the party obtaining the injunction, shall include the reasonable rents and profits of the lands recovered, and all waste committed after granting the injunction.

SEC. 130. Upon an order being made, dissolving or modifying an order of injunction, the plaintiff may move the court to reinstate the order, and the court may in its discretion allow the motion, and appoint a time for hearing the same before the court, or a time and place for hearing before some judge thereof, and upon the hearing the parties may produce such additional affidavits or depositions as the court shall direct, and the order of injunction shall be dissolved, modified, or reinstated, as the court or judge may deem right. Until the hearing of the motion to reinstate the order of injunction, the order to dissolve or modify it shall be suspended.

XII. OF ATTACHMENTS.

SEC. 131. How an attachment may issue.
132. When a writ of attachment may issue.
133. No attachment shall issue when a persons family remains in the county.
134. What shall be deemed an attempt to conceal the absence of an individual.
135. Plaintiff to give bond.
136. Writ of attachment to be directed to the sheriff; what it shall require.
137. To whom writs of attachment may issue. Several may issue to one plaintiff. When the plaintiff shall have judgment on attachment.
138. Attachment may issue and be executed on Sunday.
139. Sheriff must attach and appraise the property.
140. A writ of attachment binds as an execution.
141. Personal property must be attached first. Sheriff may pursue out of his county.
142. The estate of a decedent liable to attachment; when.
143. Defendant may have his property returned on giving a bond.
144. Right of property attached may be tried; when the right is barred.
145. The claimant of property attached to make oath respecting the property.
146. Attachment only to bind the interests of the defendant.
147. When an attachment may be dismissed.
148. When a restitution of property may be made.
149. When property attached shall be sold.
150. The sheriff to be allowed his expenses.
151. When a garnishee summons may issue; service and return of.
152. Garnishee responsible from date of the service of summons.
153. Duty of a garnishee when served with a summons. When a garnishee may be required to give information on oath.
154. Proceedings on failure of a garnishee to appear.
155. A garnishee may be arrested, when and how.
156. Final judgment against a garnishee. Garnishee may recover his costs.
157. A return of "no property found," not to affect the garnishee.
158. When a garnishee shall, or shall not, pay costs.
159. A garnishee only bound as to the defendant.
160. A garnishee may pay over moneys and be released, and not be liable for costs.
161. Examination of a garnishee, and bond thereof.
162. All creditors may come in at any time before final judgment.
163. A dismissal of one attachment not of all.
164. Defendant may move a discharge of attachment. Judgment on attachment stands against a person as other judgment. Plaintiff may file an additional bond.
165. When judgment is rendered for defendant.
166. Judgment may be given against a garnishee, and enforced by execution.
167. After judgment, property may be sold.
168. Money realized from attachment to be paid over to the creditors, after paying costs.
169. Defendant entitled to an action on plaintiff's bond.
170. The sheriff must return an order for attachment.

SEC. 131. In an action for the recovery of money, the plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached, in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 132. A writ of attachment shall be issued by the clerk of the court in which the action is brought, whenever the plaintiff, his agent or attorney, shall make affidavit that a cause of action exists against such defendant, specifying the amount of such claim, over and above all legal setoffs, and the nature thereof, and that, as the affiant verily believes, the defendant is either

1st. A foreign corporation; or

2d. A non-resident of this territory; or

3d. Is secretly leaving, or has left the territory, with intent to hinder, defraud, or delay his creditors; or

4th. Is about to sell, convey, or otherwise dispose of his property, with like intent; or

5th. Is removing, or about to remove, his property, subject to execution, or a material part thereof, out of this territory, not leaving enough therein to satisfy the claim of the plaintiff; or

6th. Has concealed, or is attempting to conceal himself, so that the ordinary process of law cannot be served upon him.

SEC. 133. No attachment, for the causes mentioned in the second and third clauses of the preceding section, shall issue against any debtor while his family remains settled within the county where he usually resided, prior to his absence, if he shall not continue absent from the territory more than one year after he shall have absented himself, unless an attempt be made to conceal his absence.

SEC. 134. If the wife or family of the debtor shall refuse or be unable to give an account of the cause of his absence, or the place where he may be found, or shall give a false account of either, such refusal, inability, or false account, shall be deemed an attempt to conceal his absence.

SEC. 135. The plaintiff, or some one in his behalf, shall, before the writ issues, execute a bond, with sufficient surety, to be approved by the clerk, payable to the defendant, to the effect that the plaintiff will duly prosecute his proceeding in attachment, and will pay all damages which may be sustained by the defendant, if the proceedings of the plaintiff shall be wrongful and oppressive.

SEC. 136. The writ shall be directed and delivered to the sheriff. It shall require him to seize and take into his possession, the property of the defendant, in his county, not exempt from execution, or sufficient thereof to satisfy the amount of the plaintiff's claim and costs.

SEC. 137. Writs of attachment may be issued to the sheriff of any other county; and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but the costs only of such as have been executed, in whole or in part, shall be recovered against the defendant, unless otherwise directed by the court. The plaintiff shall not have judgment in any such action, except in some one of the following cases, viz:

1st. When the defendant shall have been personally served with process; or

2d. When property of the defendant shall have heen attached in the county where the action is brought; or

3d. When a garnishee shall have been summoned in the county where the action is brought, who shall be found to be indebted to the defendant, or to have property or assets in his hands, subject to the attachment.

SEC. 138. A writ of attachment may be issued and executed on Sunday, if the plaintiff will show in his affidavit that the defendant is about to abscond on that day, to the injury of the plaintiff.

SEC. 139. The sheriff shall proceed, with the assistance of a disinterested and credible householder of the county, to attach the lands and tenements, goods and chattels, of the defendant, subject to execution, and shall, with the assistance of such householder, make an inventory and appraisement thereof, and return the same with the writ.

SEC. 140. A writ of attachment binds the defendant's property from the time it is served, in the same manner as an execution.

SEC. 141. The defendant's personal property shall be first taken under an attachment; if enough thereof is not found to satisfy the plaintiff's claim, and costs of the action, then his real estate. If, after a writ of attachment is placed in the hands of the sheriff, any property of the defendant is removed from the county, the sheriff may pursue and attach the same in any county, within three days after the removal thereof.

SEC. 142. The estate, property, and interest, descended to non-resident heirs or devisees, or vested in non-resident executors or administrators of decedents, shall be liable to an attachment for debt, or other demands, against the decedent's estate.

SEC. 143. The defendant, or other person, having possession of property attached, may have the same, or any part thereof, delivered to him, by executing and delivering to the sheriff a bond, with surety approved by the sheriff, payable to the plaintiff, to the effect that such property shall be properly kept and taken care of, and shall be delivered to the sheriff on demand, or so much thereof as may be required to be sold on execution, to satisfy any judgment which may be recovered against him in the action, or that he will pay the appraised value of the property, not exceeding the amount of the judgment and costs.

SEC. 144. Whenever any person, other than the defendant, shall claim any property attached, the right of property may be tried, as in cases of property taken in execution. And the claimant, having notice of the attachment, shall be bound to prosecute his claim, as in such cases, or be barred of his right against the officer or person serving the writ.

SEC. 145. The defendant, or claimant of any attached property, may be required by the court to attend before it, and give information, on oath, respecting the property.

SEC. 146. An attachment shall only bind the interest of the defendant, subject to the rights existing at the time of the attachment, of any other person to the property.

SEC. 147. If the defendant, at any time before judgment, shall appear and answer to the complaint of the plaintiff, and shall satisfy the court that the cause alleged in the affidavit did not exist at the time the writ issued, the attachment shall be dismissed at the cost of the plaintiff, who shall also be liable to the defendant; and the attachment shall also be dismissed at any time after answer, before judgment, when the defendant shall satisfy the court that the alleged causes, upon which the writ issued, have ceased to exist; in this case, the costs to abide the issue of the action, and in case the attachment shall be dismissed as above, the action may be further prosecuted to final judgment, as in cases where a summons has been served.

SEC. 148. If the defendant, or other person in his behalf, at any time before judgment, shall execute a bond to the plaintiff, and to each plaintiff who has filed his complaint under the attachment, with sufficient surety, to be approved by the court, clerk, or sheriff, to the effect that the defendant will appear to the action, and will perform the judgment of the court, the attachment shall be discharged, and restitution made of any property taken under it, or the proceeds thereof.

SEC. 149. When personal property attached is of a perishable nature, or its keeping expensive, the court may direct the sheriff to sell it at public auction, on reasonable notice. If the property is liable to immediate damages, the sheriff, in vacation, may sell it, by giving ten day's notice, without an order of court, and the proceeds of all sales shall be deposited with the clerk.

SEC. 150. The sheriff shall be allowed his reasonable and necessary expenses for keeping attached property, to be paid by the plaintiff, and taxed in the bill of costs; and if the plaintiff shall fail to pay such expenses, as they accrue, or advance them to the sheriff, the sheriff may give the plaintiff written notice, that unless so paid or advanced, he will release the property; and after the expiration of forty-eight hours from the service of such notice, upon the plaintiff or his attorney, the sheriff may, if such expenses are not paid or advanced, return, at the cost of the plaintiff, said property to the person from whom, or to the place where it was taken; and if all the property, so attached, shall be so returned, the action shall be dismissed at the cost of the plaintiff.

SEC. 151. If at the time a writ of attachment issues, or at any time afterwards, the plaintiff, or other person in his behalf, shall file with the clerk an affidavit that he has good reason to believe that any person (naming him) has property of the defendant, of any description, in his possession, or under his control, which the sheriff cannot attach by virtue of such writ; or that such person is indebted to the defendant, or has the control or agency of any property, moneys, credits, or effects; or that the defendant has any shares or interest in the stock of any association or corporation; the clerk shall issue a summons, notifying such person, corporation or association, to appear at the ensuing term of the court, and answer as garnishee in the action. The summons shall be directed to the sheriff, and served and returned by him in the same manner as a summons is served and returned in other cases.

SEC. 152. From the day of the service of the summons, as provided in section 151, the garnishee shall be accountable to the plaintiff in the action, for the amount of money, property, or credits in his hands, or due and owing from him to the defendant.

SEC. 153. It shall be the duty of any officer or agent of an association or corporation, and of every other person summoned as a garnishee, when served, or within fifteen days afterwards, to furnish the sheriff with a certificate of the number of shares, or rights of the defendants in the stock of such corporation or association, or a description of the property held by such corporation, association, or person, belonging to or for the benefit of the defendant, or the amount of the debt owing to the defendant by such association, corporation, or person, whether due or not; which certificate shall be returned by the sheriff with the summons. If such officer, agent, or person refuse so to do, he may be required by the court to attend before it, and be examined, on oath, concerning the same, and obedience to the orders may be enforced by attachment, as for contempt.

SEC. 154. Whenever any garnishee, being duly summoned, fail to appear and make discovery, as required by law, or fails to answer or demur to the matters set forth against him in the affidavit, or additional complaint or interrogatories, such matters may be taken for confessed, or judgment entered by default, as the case may require, or he may be examined under oath touching all the matters charged in the affidavit, or additional complaint; and all such proceedings, pleadings, and process, shall be had according to the practice in other cases, as shall be necessary to determine the rights of the parties, and render a final judgment.

SEC. 155. If any plaintiff, or other person in his behalf, shall satisfy the court or judge, in the manner required in this act, of the existence of any of the causes authorizing an arrest, in a civil action, against any garnishee, he may have an order for a warrant of arrest, which shall be issued, and the same proceedings had thereon as in ordinary cases of arrests in civil actions.

SEC. 156. Final judgment shall not be rendered against a garnishee, until the action against the defendant in attachment is determined; and if the plaintiff fails to recover judgment, either against the defendant or the garnishee, the garnishee shall be discharged, and recover his costs.

SEC. 157. The return of "no property found," upon the writ of attachment, shall not affect the proceedings against the garnishee.

SEC. 158. If the plaintiff recover judgment against the defendant, and the garnishee deliver up to the sheriff, before judgment against him, all the defendant's goods and chattels, or other effects in his possession, subject to execution, or a sufficient amount thereof to satisfy the plaintiff's judgment, or an inventory thereof, and pay to the sheriff, or into court, all moneys due from him, or belonging to the defendant, or a sufficient amount thereof to satisfy the plaintiff's judgment, the costs in the proceeding against the garnishee shall be paid by the defendant; but if the garnishee shall not appear, or if appearing, shall refuse truly to confess the matter alleged, and on the trial the plaintiff shall recover judgment against him, or if he admit that he has moneys, credits, or effects belonging to the defendant, in his hands, and shall refuse to pay or deliver the same as above provided, he shall pay costs.

SEC. 159. A garnishee, in attachment, shall not be compelled, in any case, to pay or perform any contract in any other manner, or at any other time, than he would be bound to do for the defendant in attachment.

SEC. 160. A garnishee may pay the moneys owing to the defendant by him, to the sheriff, or into court, and shall be discharged from liability to the defendant, for money so paid, not exceeding the plaintiff's claim; and not be liable for costs if paid at or before the first term after the writ or notice is served upon the garnishee, or as soon as the same shall be due.

SEC. 161. A garnishee, or officer of a corporation summoned as a garnishee, at any time after fifteen days from the service of the summons, may be examined in open court on oath, and if it be discovered on such examination that at the time, or after the service of the summons upon him, he or the corporation was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property, and the payment of any such indebtedness into court, or the execution of a bond by the garnishee, with sufficient sureties, to be approved by the court, payable to the plaintiff, to the effect that the indebtedness shall be paid, or the property forthcoming, as the court shall direct.

SEC. 162. Any creditor of the defendant, upon filing his affidavit and bond, as hereinbefore required of the attaching creditor, may, at any time before the final adjournment of the suit, become a party to the action, file his complaint and prove his claim or demand against the defendant, and may have any person summoned as garnishee, or held to bail, who has not before been summoned or held to bail, and propound interrogatories to the garnishee, and enforce answers thereto, in like manner as the creditor who is plaintiff.

SEC. 163. A dismissal of his action, or proceedings in attachment by the first attaching creditor, shall not operate as a dismissal of the action or proceedings of any subsequent attaching creditor.

SEC. 164. Any defendant, against whom a writ of attachment has been issued, may, after appearing to the action, move to have the attachment discharged, and restitution awarded, of any property taken under it; but an appearance to the action shall not operate to discharge the attachment, unless a bond be filed as required in section 148. If the defendant appear, and judgment be rendered in favor of the plaintiff, and any part thereof remain unsatisfied, after exhausting the property attached, such judgment shall be deemed a judgment against the defendant personally, and shall have the same effect as other judgments, and execution shall issue thereon accordingly, for the collection of such residue. If the plaintiff's bond be insufficient, he shall have a reasonable time to file an additional one.

SEC. 165. If the judgment in the action is rendered for the defendant, the attachment shall be discharged, and the property attached, or its proceeds returned to him.

SEC. 166. If judgment in the action be rendered for the plaintiff, or one or more of several plaintiffs, and sufficient proof be made of the goods, chattels, rights, credits, moneys and effects, in the possession of the garnishee, the court shall also give judgment in favor of the plaintiff or creditors, against the garnishee, or the property of the defendant, or both, as the case may require, which may be enforced by execution.

SEC. 167. After judgment for the plaintiff, or one or more of several plaintiffs, property attached and remaining unsold, may be sold on execution, as in other cases.

SEC. 168. The money realized from the attachment and garnishee, shall, under the direction of the court, after paying all costs and expenses, and the debt of the creditor who commenced the attachment, provided sufficient shall have been attached on writs issued by him, be paid to the several creditors, in proportion to the amount of their several claims as adjusted, and the surplus, if any, shall be paid to the defendant.

SEC. 169. Every defendant shall be entitled to an action on the bond of the plaintiff or creditor, by whose proceedings in attachment he shall have been aggrieved, if it shall appear that the proceedings were wrongful and oppressive, and he shall recover damages at the discretion of a jury.

SEC. 170. When an order of attachment is fully executed or discharged, the sheriff shall return the same, with his proceedings thereon, to the court.

XIII. RECEIVERS AND DEPOSITS IN COURTS.

SEC. 171. In what cases a receiver may be appointed by the court.
172. No party interested shall be appointed receiver.
173. Receiver must take oath and give bond.
174. Court to control certain fund.
175. Court may order sheriff to compel obedience to its orders.
176. Money deposited by order of the court must not be loaned out.
177. Powers of the receiver.
178. When a part of a claim is admitted, judgment therefor may be entered and execution issued.

SEC. 171. A receiver may be appointed by the court in the following cases:

1st. In an action by a vendor to vacate a fraudulent purchase of property or by a creditor to subject any property or fund to his claim.

2. In actions between partners or other persons jointly interested in any property or fund.

3. In all actions where it is shown that the property, fund or rent, and profits in controversy is in danger of being lost, removed, or materially injured.

4. In actions by a mortgage for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured, or when such property is insufficient to discharge the mortgage debt, to secure the application of the rents and profits accruing before a sale can be had.

5. When a corporation has been dissolved, or is insolvent, or is in iminent danger of insolvency, or has forfeited its corporate rights.

6. And in such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

SEC. 172. No party, or attorney, or other person interested in an action, shall be appointed receiver therein.

SEC. 173. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court, execute a bond to such person as the court may direct, conditioned that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

Sec. 174. When it is admitted by the pleading or examination of a party that he has in his possession, or under his control, any money, or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs, or is due to another party, the court may order the same to be deposited in court, or delivered to such party with or without security, subject to the further direction of the court.

Sec. 175. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or thing and deposit or deliver it in conformity with the direction of the court.

Sec. 176. Money deposited or paid into court in an action, shall not be loaned out, unless with the consent of all the parties having an interest in, or making claim to the same.

Sec. 177. The receiver shall have power, under the control of the court, to bring and defend actions—to take and keep possession of the property—to receive rents—collect debts, and generally to do such acts respecting the property, as the court may authorize.

Sec. 178. When the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order by execution or attachment.

XIV. OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS, ISSUES AND THE MODE OF TRIAL.

Sec. 179. Issues of two kinds.
180. An issue of law.
181. An issue of fact.
182. When issues of law and fact may arise, and how to be tried.
183. Issues of law tried by the court; issues of fact by a jury.
184. Affidavit required to grant a continuance. When evidence is admitted, or overruled, trial not to be continued.

Sec. 179. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party, and controverted by the other, and are of two kinds.

1st. Of law; and

2nd. Of fact.

Sec. 180. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

Sec. 181. An issue of fact arises:

1st. Upon a material allegation in the complaint controverted by the answer; or, 2d. Upon new matter, or a set-off, controverted by the reply; or

3d. Upon new matter in the reply.

SEC. 182. Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law shall be first tried, unless the court otherwise direct.

SEC. 183. An issue of law shall be tried by the court, unless referred upon consent, as provided in this act. An issue of fact shall be tried by a jury, unless a jury trial be waived, or a reference be ordered as provided in this act.

SEC. 184. A notice to continue a trial on the ground of the absence of evidence, shall only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to take upon affidavit, the evidence which he expects to obtain, and if the adverse party admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued.

XV. TRIALS BY JURY.

SEC. 185. Mode of empanneling a jury.
186. Challenges of jurors allowed to each party.
187. On what ground challenges for cause may be taken.
188. How challenges for cause to be tried.
189. Oath of jurors.
190. Ballots to be returned to the jury box.
191. How the jury is to be kept.
192. Proceedings when a juror is taken sick.
193. Address of counsel; charge of court, exceptions, &c.
194. Deliberations of the jury, how made.
195. Jury may take the pleadings in the case, papers, record, and other papers.
196. Jury may ask information after retiring.
197. The court always open with respect to the cause before it. Adjournment of the court discharges the jury.

SEC. 185. When the action is called for trial, the clerk shall prepare separate ballots, containing the names of the jurors summoned, who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn, shall constitute the jury. If the ballots become exhausted before the jury is complete, or if, from any cause, a juror or jurors be excused or discharged, the sheriff, under the direction of the court, shall summon from the bystanders, or citizens of the county, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number, not less than three, and such consent shall be entered by the clerk on the minutes of the trial.

Sec. 186. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and shall be peremptory, or for cause. Each party shall be entitled to three peremptory challenges.

Sec. 187. Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by law to render a person competent as a juror.

2. Consanguinity, or affinity within the third degree to either party.

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party; or being a member of the family of either party; or a partner in business with either party; or being security on any bond for either party.

4. Interest on the part of the juror in the event of the action, or in the main question involved in the action.

5. Having formed or expressed an unqualified opinion or belief as to the merits of the action.

6. The existence of a state of mind in the juror evincing enmity against either party.

Sec. 188. Challenges for cause, shall be tried by the court. The juror challenged, and any other person as a witness, may be examined on the trial of the challenge.

Sec. 189. As soon as the jury is full, an oath or affirmation shall be administered to the jurors in substance, that they will well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict give, according to the evidence.

Sec. 190. When the jury is full and sworn, the ballots containing the names of the jurors sworn shall be laid aside till the jury so sworn, is discharged, and then they shall be returned to the box; and every ballot drawn containing the name of a juror not so sworn, shall be returned to the box as soon as the jury is completed.

Sec. 191. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the case to the jury, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any person, or allow any other person to converse with them, or among themselves on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

Sec. 192. If, after the empanneling of the jury, and before a verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn, and the trial began anew, or the jury may be discharged, and a new jury then or afterwards empanneled.

SEC. 193. When the evidence is completed, the plaintiff or party having the burden of proof may, by himself or counsel, address the court and jury upon the law and the facts of the case, after which the other party may address the court and jury in like manner, and be followed by the party first addressing the court, by himself or one counsel. The court shall then proceed to charge the jury upon the law in the case, when either party may ask, in writing, such instructions to the jury as he may deem proper; and if the court refuse to give such instructions, the party asking the same may except. Either party shall have the right to except to the charge of the court or any part thereof; but no exception shall be regarded which does not point out the particular points excepted to.

SEC. 194. The jury may either decide in the court room, or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

SEC. 195. Upon retiring for deliberation, the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession.

SEC. 196. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the parties or counsel.

SEC. 197. While the jury are absent, the court may adjourn from time to time, in respect to other business; but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury is discharged. A final adjournment of the court discharges the jury.

XVII. OF THE VERDICT.

SEC. 198. A verdict, general or special; general verdict defined; special verdict defined.
199. When and how a jury may assess damages.
200. When a verdict may be general or special at the discretion of the jury, and when at the discretion of the court.
Verdict to be filed and entered.
201. A special shall control a general verdict.
202. When jury may assess amount of verdict.
203. Verdict may be corrected, and must be entered.

SEC. 198. The verdict of a jury is either general or special. A general verdict is that by which the jury pronounces generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

SEC. 199. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof; and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention, or taking and withholding such property.

SEC. 200. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered upon the minutes.

SEC. 201. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

SEC. 202. When a verdict is found for the plaintiff in an action for the recovery of money or for the defendant when a set-off for the recovery of money is established beyond the amount of the plaintiff's claim established, the jury shall also assess the amount of the recovery when the court give judgment for the plaintiff on the answer.

SEC. 203. If the verdict be informal, it may be correctd by the jury under the advice of the court, or the jury may be again sent out. When rendered, the verdict shall be entered by the clerk on his minutes.

XVII. OF TRIAL BY THE COURT.

SEC. 204. When trial by jury may be waived.
205. Decision of court to be filed; how given.
Judgment to be entered thereon.

SEC. 204. Trial by jury may, with the assent of the court, be waived by the several parties, in the manner following:

1st. By failing to appear at the trial;

2d. By written consent, in person, or by attorney, filed with the clerk;

3d. By oral consent in open court, entered in the minutes.

SEC. 205. Upon the trial of an issue of fact by the court, its decision shall be given in writing, and filed with the clerk. In giving the decision, the facts found, and the conclusions of law shall be seperately stated. Judgment upon the decision shall be entered accordingly.

XVIII. OF TRIAL BY REFEREES.

SEC. 206. Issues may be referred by consent of parties.
207. When a reference may be directed without consent.
208. To whom reference may be made.
209. Qualification of a referee.
210. How trial by referees shall be conducted.

SEC. 206. All or any of the issues in the action, whether of fact or law, or both, may be referred upon the written consent of the parties.

SEC. 207. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1st. When the trial of an issue of fact shall require the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or to report any specific question of fact involved therein; or,

2d. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue at law, or for carrying a judgment or order into effect; or,

3d. When a question of fact, other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of the action; or,

4th. When it is necessary for the information of the court in a special proceeding.

SEC. 208. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three, who reside in the county in which the action is brought, or the proceeding is triable.

SEC. 209. When the appointment of referees is made by the court or judge, each referee shall be:

1st. Qualified as a juror, as provided by statute;

2d. Competent as a juror between the parties.

SEC. 210. The trial by referees shall be conducted in the same manner as a trial by the court. They shall first be sworn well and faithfully to discharge their duties as such referees, and shall have the same power to administer oaths to witnesses, and to grant continuances as the court upon such trial. They shall state the facts found, and the conclusions of law, separately, and their decision shall be given, and may be excepted to and reviewed, in like manner. The report of the referees upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon, at the next term of the court after the decision is made, in the same manner as if the action had been tried by the court. When the reference to report the fact, the report shall have the effect of a special verdict.

XIX. OF EXCEPTIONS.

SEC. 211. Exception defined.
What exceptions shall be disregarded.
212. Exceptions must be in writing, and may be signed by the judge and filed by the clerk.
213. No form of exceptions required.
214. When notice of exception is not necessary.

SEC. 211. An exception is an objection taken at the trial to a decision upon matter of law, whether such trial be by jury, court or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and effect the substantial rights of the parties.

SEC. 212. The point of exception shall be taken at the time when the decision is made, be particularly stated in writing, and may be signed by the judge and filed with the clerk, or may, by the order of the court, be entered at large upon the journal.

SEC. 213. No particular form of exception shall be required. The objection shall be stated, with so much of the evidence or other matter as is necessary to explain it, but no more.

SEC. 214. When a cause has been tried by the court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed accepted, on a motion for a new trial or on appeal, without any special notice that an exception is taken thereto.

XX. OF NEW TRIAL.

SEC. 215. A new trial defined.
216. For what causes a new trial may be granted.
217. When facts on application for a new trial shall be stated by affidavit; when on a written statement.
218. When motions for a new trial shall be made.
219. When counter affidavits may be filed.

SEC. 215. A new trial is a re-examination of an issue, in the same court after a trial and decision by a jury, court or referees.

SEC. 216. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes, materially affecting the substantial rights of such party:

1st. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which such party was prevented from having a fair trial;

2d. Misconduct of the jury or prevailing party;

3d. Accident or surprise, which ordinary prudence could not have guarded against.

4th. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

5th. Excessive damages, appearing to have been given under the influence of passion or prejudice;

6th. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

SEC. 217. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last preceding section, the facts upon which it is based shall be made to appear by affidavit. For any other cause it shall be made upon a written statement.

SEC. 218. Notice of an intended motion for new trial, shall be given on the day when the verdict is rendered, or within two days thereafter; and all motions shall be made during the term at which a cause is tried, unless for good cause the court allow further time.

SEC. 219. If the application be made upon affidavits filed, the adverse party may use counter affidavits on the hearing; but such counter affidavits shall be filled with the clerk previous to the hearing.

XXI. JUDGMENT IN GENERAL.

SEC. 220. A judgment defined.
221. Against whom a judgment may be given, and the extent thereof.
222. In actions against several defendants the court may seperate the judgment.
223. When an action may be dismissed, or a non-suit entered.
224. In all other cases judgment to be rendered on its merits.

Sec. 220. A judgment is the final determination of the rights of the parties in the action.

Sec. 221. Judgment may be given for one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

Sec. 222. In an action against several defendants, the court may, in its discretion render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

Sec. 223. An action may be dismissed, or a judgment of non-suit entered in the following cases:

1st. By the plaintiff himself, at any time, either in term time or in vacation, before the jury retire to consider of their verdict, unless set-off be interposed as a defense, or unless the defendant sets up a counter claim to the specific property or thing which is the subject matter of the action;

2d. By either party, upon the written consent of the other;

3d. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal;

4th. By the court, when upon the trial and before the final submission of the case, the plaintiff abandons it;

5th. By the court, on the refusal or neglect of the plaintiff to make the necessary parties, after having been ordered by the court;

6th. By the court, on the application of some of the defendants, where there are others, whom the plaintiff fails to prosecute with diligence.

7th. By the court, for disobedience by the plaintiff, of an order concerning the proceedings in the action.

8th. By the court, upon notice of the defendant, when upon the trial the plaintiff fails to prove a sufficient cause for the jury.

Sec. 224. In every case, other than those mentioned in the last section, the judgment shall be rendered on the merits.

XXII. JUDGMENT UPON A FAILURE TO ANSWER.

Sec. 225. When judgment may be had on failure to answer.

Sec. 225. Judgment may be had on proof of the service of the summons and complaint, if the defendant fail to answer the complaint, as follows:

1st. In an action arising upon a contract for the recovery of money only, if no answer be filed with the clerk of the court, within the time prescribed by law, or such further time as may have been granted, the court, at its next term, upon the application of the plaintiff, may direct the clerk to enter the default of the defendant, and immediately thereafter enter judgment for the amount mentioned in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section forty-three of this act.

2d. In other actions, if no answer be filed with the clerk of the court within the time prescribed by law, or such further time as may have been granted, the court shall, in like manner, direct the clerk to enter the default of the defendant; and thereafter the plaintiff may apply at that, or any subsequent term of the court, for the relief demanded in the complaint.—If the taking of an account, or other proof of any fact, be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And when the action is for the recovery of damages only, or of specific, real, or personal property, with damages for the withholding thereof, the court may order the damages to be assessed by a jury, or, if to determine the amount of damages, the examination of a long account be necessary, by a reference, as above provided.

3d. In actions where the service of the summons shall be by publication, the plaintiff may in like manner apply for judgment, and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the territory, shall require the plaintiff or his agent to be examined, on oath, respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment, the court may, in its discretion, require the plaintiff to cause to be filed satisfactory security to abide the order of the court, touching the restitution of any property, collected or received under the judgment, in case the defendant or his representatives shall be admitted to defend the action, and succeed in the defence.

4th. The court may, in its discretion, before final judgment, set aside any default upon affidavit, showing good and sufficient cause, and upon such terms as may be deemed reasonable.

XXIII. OF JUDGMENT BY CONFESSION.

SEC. 226. How judgment by confession may be had.
227. Plaintiff shall make oath that the amount confessed is actually due.
228. Judgments by confession shall have the same effect as other judgments.

SEC. 226. Any defendant may appear in court, in person or by attorney, duly authorized, in writing, and confess judgment for any amount due or owing by him, and such confession shall be a waiver of all errors for want of service or complaint. When made upon a written power of attorney, the execution thereof shall be proved to the satisfaction of the court, and the power of attorney filed with the clerk.

SEC. 227. In all cases, the plaintiff or his attorney shall make oath that the amount for which the judgment is taken is actually due, and that the confession is not made by collusion with the defendant, or for the purpose of hindering, defeating, or defrauding any creditors of the defendant.

SEC. 228. Judgments by confession shall have the effect of ordinary judgments, from the day on which they are rendered.

XXIV. OF THE MANNER OF TAKING AND ENTERING JUDGMENT.

SEC. 229. Judgments shall be in conformity to the verdict.
230. When the case is reserved, either party may bring it before the court.
231. Judgments for excess may be given.
232. Judgment for possession. Judgment for return.
233. Papers to be kept after judgment.
234. Each clerk to keep an execution docket.
235. What shall be entered in the execution docket.
236 & 237. Further entries in the execution docket.
238. Clerk to make an alphabetical index to the execution docket.
239. Clerk to keep a book of levies; how kept, &c.

SEC. 229. When a trial by jury has been had, judgment shall be entered in conformity to the verdict, at the term during which it is rendered, unless an affidavit or statement of grounds for a new trial shall be filed, or unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

SEC. 230. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument, at the first term thereafter.

SEC. 231. If a set-off, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

232. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

SEC. 233. Immediately after entering the judgment, the clerk shall attach together all the papers in the case, and carefully keep them in his office.

SEC. 234. Every clerk shall keep in his office a well bound book, to be called the execution docket, which shall be a public record, and open during usual business hours, to all persons desirous of inspecting it.

SEC. 235. Within thirty days after the close of any term of the court, the clerk shall enter in said execution docket a statement of each final judgment, rendered at such term, containing

1st. The names, at length, of all the parties.

2d. The date of the judgment, and against whom rendered.

3d. The amount or nature of the judgment, and costs.

4th. An abstract of the costs of each party, and to whom belonging.

SEC. 236. The clerk shall also enter in his execution docket a minute, in like manner, of any transcript of a judgment from the supreme court, or from the district court of any other county, or from a justice of the peace, when the same are presented to him for that purpose, as shall be provided for by law.

SEC. 237. He shall leave space, on the same page if practicable, with each case, in which he shall enter, in the order in which they occur, all the proceedings subsequent to the judgment in said case, until its final satisfaction, including the time when, and to what county, the execution is issued, and when returned, and the return, or substance thereof. When the execution is levied on personal property, which is returned unsold, the entry shall be, "levied (noting the date,) on personal property, not sold."— When any sheriff shall furnish the clerk with a copy of any levy upon real estate, on any judgment, the minutes of which are entered in his execution docket, the entry shall be, "levied upon real estate," noting the date, and shall refer to the page upon the book of levies where the same is entered, as is hereinafter provided. When any execution, issued to any other county, is returned, levied upon real estate in such county, the entry in the execution docket shall be, "levied on real estate of ———, in ——— county," noting the date, county, and defendant, whose estate is levied upon; and when the money is made, or any part thereof, the amount and time when made shall be entered; also, when a writ of error has been taken, or the judgment is appealed, reversed, modified, discharged, or in any manner satisfied, the facts in respect thereto, shall be entered. The parties indebted may also assign or discharge such judgment, on such execution docket; when the judgment is fully satisfied, in any way, the clerk shall write the word "satisfied," in large letters, across the face of the entry of such judgment.

SEC. 238. The clerk shall prefix to the execution docket, a full and correct alphabetical index, containing the names of all persons, parties to judgments, plaintiffs and defendants, in separate columns.

SEC. 239. The clerk shall also keep in his office a well bound book, to be called the book of levies, which shall be a public record, and open during usual business hours, to all persons desirous of inspecting the same, in which he shall enter all levies upon real estate in his county, when delivered to him by the sheriff, as is provided by law. An alphabetical index shall be prefixed to the book of levies, containing the names of all persons upon whose real estate such levies have been made, and when such levies are discharged, in any manner, an entry thereof shall be made in the margin of the book of levies, where the levy is recorded.

XXV. JUDGMENT LIENS.

SEC. 240. Judgment to be a lien on real estate, when. Appeals or stay of execution not to affect any lien.
241. Personal property to be held from date of levy.

SEC. 240. The real estate of any judgment debtor, and such as he may acquire, shall be held and bound to satisfy any judgment of the district or supreme court, or any judgment of a justice of the peace, authorized by law to be levied upon real estate, for the period of five years from the day on which said judgment was rendered, said lien to commence as follows:— On judgments of the district court of the county where the land is situated, from the date of the rendition of the judgment. In all other cases, from the date on which the levy is made, provided the levy shall be lodged with the clerk, to be recorded in the book of levies, in the manner and at the time prescribed by law. If not so lodged with the clerk, within such time, then from the time when it shall be so lodged. An appeal to the supreme court, writ of error, or stay of execution, shall not affect any existing lien, and in all cases of an appeal or writ of error, the time from which the five years shall commence to run, shall be from the date of the final judgment in the supreme court.

SEC. 241. Personal property shall only be held from the time it is actually levied upon.

XXVI. EXECUTION.

SEC. 242. Execution may issue within five years.
243. When and how execution may issue after five years.
244. How judgments may be enforced.
245. Four kinds of executions. In all cases, costs to be collected.
246. How, and in what manner, each execution shall be issued.
247. To whom executions shall issue.
248. Sheriff's return on an execution.
249. Execution for an arrest may be served in any county.
250. How persons arrested on execution to be kept.
251. All property not exempt liable to execution.

SEC. 242. The party in whose favor judgment is given, may, at any time within five years thereafter, issue a writ of execution for its enforcement, as prescribed by law.

SEC. 243. After the lapse of five years from the date of the judgment, an execution can be issued only by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent or non-resident, or cannot be found, in which case it may be given by publication, or in such other manner as the court shall direct; such leave shall not be given, unless it be established by the oath of the party, or other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied and due.

SEC. 244. When a judgment requires the payment of money, or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this act. When it requires the performance of any other act, a certified copy of the judgment may be served on the party against whom it is given, or the person or officer who is required thereby, or by law, to obey the same, and a writ shall be issued commanding him to obey or enforce the same. If he refuse, he may be punished by the court as for a contempt.

SEC. 245. There shall be four kinds of executions: one against the property of the judgment debtor; another against his person; the third for the delivery of the possession of real or personal property, or such delivery with damages, for withholding the same; and the fourth commanding the enforcement of or obedience to any special order of the court. And in all cases there shall be an order to collect the costs.

SEC. 246. The writ of execution shall be issued in the name of the United States, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, or coroner, when the sheriff is a party or interested, and shall intelligibly refer to the judgment, stating the court, the county where the judgment was rendered, the names of the parties, the amount of the judgment, if it be for money, and the amount actually due thereon, and shall require the sheriff substantially, as follows:

1st. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, out of his real property, upon which the judgment is a lien.

2d. If it be against real or personal property, in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property.

3d. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor, and commit him to the jail of the county, until he shall pay the judgment, with interest, or be discharged according to law.

4th. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any charges, damages, or rents and profits, recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of his real property.

Where it is to enforce obedience to any special order, it shall particularly command what is required to be done or to be omitted. Where the nature of the case shall require it, the execution may embrace one or more of the requirements above mentioned. And in all cases, the execution shall require the collection of all interest, costs, and increased costs thereon.

Sec. 247. When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in this territory, but it shall not be issued, in the first instance, to the sheriff of any other county than that in which the judgment is rendered, unless the plaintiff or his attorney shall first make and file with the clerk an affidavit, that the defendant has not, subject to execution, sufficient property, real or personal, in said county, to satisfy the judgment, but that he has property subject to execution in some other county or counties. But after an execution has been returned "no property found," in the county in which judgment was rendered, an execution may be issued to any other county, upon the plaintiff or his attorney making oath that the defendant has property subject to execution in some other county or counties. When it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated.

Sec. 248. The sheriff shall endorse upon a writ of execution, the time when he received the same, and such execution shall be returnable within ninety days after its date, to the clerk who issued the same.

Sec. 249. If the action be one in which the defendant may be arrested, as provided by law, an execution against the person of the judgment debtor, may be issued to any county in the territory: *Provided*, That the sheriff shall not arrest the defendant, if he shall deliver to him property subject to levy, sufficient to satisfy said judgment.

Sec. 250. A person arrested on execution shall be imprisoned within the jail, or the liberties thereof, and kept at his own expense, until satisfaction of the execution, or his legal discharge, but the plaintiff shall be liable to the sheriff, in the first instance, for such expense, as in other cases of arrest, in the same manner, and to the same extent, as herein prescribed.

Sec. 251. All property, real and personal, of the judgment debtor, not exempt by law, shall be liable to execution.

XXVII. EXEMPTION.

SEC. 252. Property of wife exempt. Proviso.
253. What property shall be exempt from execution.
254. The defendant to select property exempt.
255. How it is to be ascertained what property is exempt.

SEC. 252. All real and personal estate to which any married woman shall hereafter become entitled to in her own right, and all which may at the time of her marriage belong to her, and all the issues, rents and profits of such real estate shall not be liable to attachment for, or execution upon, any liability of a judgment against the husband so long as she, or any minor heir of her body shall be living: *Provided*, That her separate property shall not be exempt from attachment or execution where the debts were owing by the wife, previous to marriage, or may have been contracted for her benefit.

SEC. 253. The following property shall be exempt from execution, except as herein otherwise specially provided:

1st. Dwellings and other buildings, to the value of five hundred dollars; all private libraries, all articles of clothing of married women and children under twenty-one years of age; and to each family, kitchen and cupboard ware to the amount of one hundred and fifty dollars; one bed for every two persons in the family; two cows; two horses or two yoke of oxen; one wagon; two hogs; farming utensils actually used by the family; produce raised upon the farm or garden sufficient for six months consumption, and all tools of mechanics used to carry on their trade. But no article of property mentioned in this section, shall be exempt from an execution issued on a judgment recovered for its price, or upon a mortgage thereon, or for any tax levied thereon.

SEC. 254. In all cases the defendant himself may select the property which is exempt.

SEC. 255. When a sheriff or other officer has levied upon or attached, or is about to levy upon or attach, personal property which is claimed to be by law exempt from execution or attachment, the sheriff or other officer shall, if required by the person claiming, forthwith summon three discreet and disinterested men, having the qualifications of jurors, being householders and resident in the vicinity where the property is found, and administer to them an oath impartially to examine and determine how much, if any, of said property is so exempt. Such persons shall have full power to summon witnesses, administer the necessary oaths, and adjourn from time to time not longer than three days in all. They shall also have power to appraise the property claimed, and the other property of the claimant, so far as may be necessary to determine what portion, if any, is so exempt. They shall deliver their decision to the sheriff in writing, and he shall forthwith deliver to the person claiming, such property as is by them decided exempt from execution; but nothing in this section contained, shall prevent the person claiming the property, from giving a bond, and trying his right before the district court, as is provided in cases for trying the right of property claimed by other persons than the judgment debtor.

XXVIII. ADVERSE CLAIMS TO PROPERTY LEVIED UPON.

SEC. 256. How adverse claim may be made.
257. Said claim to be placed on docket and tried in court.
258. Plaintiff and defendants in said case.
259. Trial of the case, and judgment.

SEC. 256. When any other person than the judgment debtor, shall claim property levied upon or attached, he may have the right to demand and receive the same from the sheriff or other officer making the attachment or levy, upon his making an affidavit that the property is his, or that he has a right to the immediate possession thereof, stating on oath the value thereof, and giving to the sheriff or officer, a bond with sureties in double the value of such property, conditioned that he will appear at the next term of the district court of the county in which the property was seized, which shall commence ten days or more after the bond is accepted by the sheriff or officer, and make good his title to the same, or that he will return the property, or pay its value to the said sheriff or other officer. If the sheriff or other officer require it, the sureties shall justify as in other cases, and in case they do not so justify when required, the sheriff or officer shall retain the property, if the sheriff or officer do not require the bail to justify he shall stand good for their sufficiency. He shall date and endorse his acceptance upon the bond.

SEC. 257. The officer shall return the affidavit, bond and justification, if any, to the office of the clerk of the district court of the county in which the property was seized, and the clerk shall place the same upon his trial docket at the first term, which shall commence ten days or more after it was accepted by the sheriff or officer as above provided for, and it shall stand for trial at that term.

SEC. 258. The person claiming the property shall be plaintiff, and the sheriff and plaintiff in the execution defendants.

SEC. 259. If the claimant makes good his title to the property, the bond shall be cancelled, if to a portion thereof, a like proportion of the bond shall be cancelled, but if he shall not maintain his title, judgment shall be rendered against him and his sureties for the value of the property, or for such a less amount as shall not exceed the amount due on the original execution or attachment. Where the judgment is in favor of the sheriff for the entire property, the claimant shall pay the costs, where the claimant recovers all the property, judgment shall be given in favor of the claimant for costs, where the claimant recovers a portion of the property only, the costs shall be apportioned. When the plaintiff prevails, the costs may be taxed against the defendant who was plaintiff in the execution or attachment, or the court may, if they shall be of opinion that the sheriff attached or levied upon said property without the exercise of due caution, adjudge him to pay the costs or any portion thereof.

XXIX. SALE OE PROPERTY TAKEN IN EXECUTION.

Sec. 260. Notice shall be given of sale.
261. When, where, and how, sales under execution shall be made.
262. The form and manner of the sale of real estate.
263. How land sold shall be divided.
264. Land sold by the parcel not to be divided.
265. Land to go to the highest bidder; money to be returned, &c.
266. Proceedings on the return of real estate.
267. Perfection of title to real estate sold under execution.
268. Personal property levied on, may be retained by the defendant on giving bond for its return.
269. Sales under execution may be postponed.
270. Delivery of personal property by the sheriff.
271. Sale of real estate to be absolute.
272. Where execution is against several parties and one satisfies it, how he may compel contribution and repayment.

Sec. 260. Before the sale of property on execution, notice thereof shall be given as follows:

1st. In case of personal property, by posting written or printed notice of the time and place of sale, in three public places of the county where the sale is to take place, not less than fifteen days before the day of sale.

2d. In case of real property, by posting a similar notice, particularly describing the property, in three public places of the county where the property is situated, one of which shall be where the property is to be sold, for four weeks prior to the day of sale, and publishing a copy thereof once a week for the same period, in a newspaper of the county, if there be one, or if there be none, then in a newspaper of the territory, published nearest the place of sale.

Sec. 261. All sales of property under execution, shall be made by auction, between nine o'clock in the morning, and four o'clock in the afternoon, after sufficient property has been sold to satisfy the execution, no more shall be sold, neither the officer holding the execution, nor his deputy, shall become a purchaser, or be interested in any purchase at such sale, when the sale is of personal property, capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price, and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. Sales of real property shall be made on the premises, if occupied by the defendant, or any person, holding under him, otherwise such sales shall be made at the court house door.

SEC. 262. The form and manner of sale of real estate by execution, shall be as follows:

The sheriff shall proclaim aloud, at the place of sale, in the hearing of all the bystanders—"I am about to sell the following tracts of real estate, (here reading the description) upon the following execution: (here reading the execution.) He shall also state the amount which he is required to make upon the execution, which shall include damages, interests, and costs, up to the day of sale and increased costs.

If town property, and divided into two or more known lots, he shall ask,

1st. Who will pay this debt for a seven years' lease of all these lots? If there is a bidder, he shall then inquire:

2d. Who will pay the debt for a seven years' lease of any less number of lots than the whole? If there is a bidder, he shall inquire in respect to the smallest number of lots, for a lease of which, any bidder is willing to pay the debt.

3d. Who will pay this debt, for the lease for the least period of time?

If other lands, and divided into known tracts or parcels, he shall make similar inquiries concerning the whole, and the several parcels, and the separate acres in each parcel. If a single tract of land, he shall make similar inquiries concerning the whole, and the number of acres. If there is no bidder who is willing to pay the debt for such lease of the whole, or of any part known as separate lots, parcels or acres, he shall then inquire who will pay the debt for the whole, or any known part, in lots, parcels or acres, as the case may require. If he shall have a bidder, he shall then offer for sale to the highest bidder above the debt, the lowest number of lots, or parcels, or acres, for which any one is willing to pay the debt. If he has no bid for the whole, or any portion equal to the amount of the debt, he shall then offer the land for sale, the lots and parcels separately or together, as he shall deem most advantageous. All land, except town lots, shall be sold by the acre.

SEC. 263. Where the land is sold by the acre, and any less number of acres than the whole tract or parcel is sold, it shall be measured off to the purchaser in a square form, from the north-east corner of the tract or parcel, unless some person having an interest in the land, shall, at the sale, or prior thereto, and before the bidding is made, request that the land sold, shall be taken from some other part, or in some other form; in such case, if such request is reasonable, the officer making the sale, shall sell accordingly.

SEC. 264. When any entire tract or parcel is sold by the acre, it shall not be measured, but shall be deemed and taken to contain the number of acres named in the description, and be paid for accordingly, and where the number of acres is not contained in the description, the officer shall declare according to his judgment, how many acres are contained therein, which shall be deemed and taken to be the true number of acres.

SEC. 265. The officer shall strike off the land to the best bidder, who shall forthwith pay the money bid to the officer, who shall return the money with his execution, and his doings thereon to the clerk of the court from which the execution issued, according to the order thereof.

SEC. 266. Upon the return of any sale of real estate as aforesaid, the clerk shall enter the cause on which the execution issued by its title in the docket of the term next after such return, and mark opposite the same, "sale of land for confirmation," and if no objection is made, the court, at such term, shall confirm such sale, and order the officer to make out and deliver to the purchaser a deed or release of the land sold as the case may require. If the court shall be satisfied that by any irregularity of the officer, or from any cause, injustice has been done, the court shall set aside the sale or lease, and order a new execution. When the sale is confirmed, the money shall be paid to those entitled thereto. When the sale is set aside, the money shall be repaid to the purchaser.

SEC. 267. The party to whom such lease or deed is given, shall, upon the receipt thereof, take the same to the clerk of the district court of the county where the land lies, or to which said county is attached for judicial purposes, who shall enter in his book of levies, where the levy is recorded, what disposition has been made of such portion of the real estate; and shall endorse the fact upon the deed or lease, with the date when presented to him, and when made. And no recorder shall record any such deed or lease without such endorsement.

SEC. 268. When the sheriff shall levy upon personal property, by virtue of an execution, he may permit the defendant to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant executing a bond to the sheriff, with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale, and for non-delivery thereof, an action may be maintained upon such bond by the sheriff or the plaintiff in the execution.

SEC. 269. If, at the time appointed for the sale, the sheriff should be prevented from attending at the place appointed, or being present, should deem it for the advantage of all concerned, to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale, not exceeding one week, next after the day appointed, and so from time to time for like cause, giving notice of every adjournment by public proclamation, made at the same time, not exceeding the life of the execution.

SEC. 270. When the purchaser of any personal property, capable of manual delivery, shall pay the purchase money, the sheriff shall deliver to him the property, and shall give him a receipted bill of sale. When such personal property shall not be capable of manual delivery, the sheriff shall execute and deliver to the purchaser a receipted bill of sale.

SEC. 271. The lease and sale of real estate under execution, after the same is confirmed, shall be absolute.

SEC. 272. Where property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such cases, the person so paying or contributing, shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment, and claim to contribution or repayment; upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.

XXX. PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

SEC. 273. Proceedings when judgment debtor refuses to satisfy the judgment.
274. Examination of judgment debtor.
275. Debtors of the judgment debtor may satisfy execution.
276. Examination of persons indebted to the judgment debtor.
277. On examination garnishee to answer on oath.
278. Garnishee required to make answer.
279. Judgment by default may be proceeded as in other cases.
280. Exceptions may be taken to answer of garnishee. When body of garnishee may be attached.
281. Issues between judgment creditor and debtor to be tried as other issues. When garnishees answer shall be deemed sufficient.
282. Proceedings when answer of garnishee is not excepted to.
283. Garnishee may be discharged by delivering property to the sheriff.
284. Persons may be examined on oath concerning property in the hands of a garnishee.
285. In issues between judgment creditors and garnishees costs may be adjudged as in other cases.
286. Executions to issue as in other cases.
287. Earnings of a judgment debtor not liable.
288. Public officers not liable to answer as garnishees.

SEC. 273. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise, to the satisfaction of the district court, or any judge thereof, that the judgment debtor has property or effects liable to execution which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear and answer under oath concerning the same before such court or judge, or before a referee appointed by such court or judge, at the time and place specified in the order, the place to be within the county in which the judgment debtor resides, and disobedience to such order may be punished as for a contempt.

SEC. 274. The judgment debtor, on his appearance, may be examined on oath concerning his property, and his answers reduced to writing, and filed with the clerk of the court by whom the execution was issued. Either party may also examine witnesses in his behalf, and if, during such examination, any property, rights or credits of such judgment debtor, not exempt by law, be discovered, they may be levied upon by execution.

SEC. 275. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

SEC. 276. After the issuing or return of an execution against property of a judgment debtor, or of any one of several debtors in the same judgment, and upon an affidavit that any person or corporation, has property of such judgment debtor, or is indebted to him in an amount exceeding twenty-five dollars, the district court, or any judge thereof, may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before such court or judge, and answer concerning the same. If, before a referee, the examination shall be taken by the referee and certified to the court or judge. The court or judge may also, in their discretion, require notice of such proceeding to be given to any party to the action, in such manner as may seem to him proper.

SEC. 277. At any time after the making of such order, the judgment creditor may exhibit written allegations and interrogatories touching the property, stock or credits of the judgment debtor, in the possession of, or held by such person or corporation as garnishee, or debts owing to the judgment debtor by him or it, and such garnishee shall be required to make full, direct and true answers to the same on oath.

SEC. 278. On the day when the garnishee shall be required to attend before the court, judge or referee, he shall exhibit on oath his answer to the allegations and interrogatories of the judgment creditor, unless for cause shown, a further time shall be allowed; in default of such answer, the judgment creditor may take judgment by default against him at the next term thereafter, or the court or judge may punish him as for a contempt.

SEC. 279. Such judgment by default may be proceeded on to final judgment in like manner, as action against defendants, but no final judgment shall be rendered against the garnishee for a greater amount than that specified in the execution.

SEC. 280. The judgment creditor may except to the answer of any garnishee for insufficiency, and if the same shall be judged insufficient, the court or judge may allow the garnishee to amend his answer in such time, and upon such terms as shall be just, or the judgment creditor may take judgment by default, or move the court or judge to attach the body of the garnishee, to compel a sufficient answer.

SEC. 281. The judgment creditor may deny the answer of the garnishee in whole or in part, and the issue shall be tried as ordinary issues between plaintiff and defendant. If the answer of the garnishee be not excepted to, or denied in such time as the court or judge may deem proper, it shall be taken to be true and sufficient.

SEC. 282. If by the answer not excepted to or denied, or if upon trial it shall appear that the garnishee is possessed of property or effects of the judgment debtor, or is indebted to him the value of such property or effects, or of the debt, being ascertained, judgment may be rendered against the garnishee for the proper amount in money, but if such debt be not yet due, execution shall not be awarded against the garnishee until it becomes due; and in such cases the court may make him a reasonable allowance for his trouble in answering, to be paid out of the fund in his hand.

SEC. 283. Whenever any property, effects, money or debts belonging or owing to the judgment debtor, shall be confessed or found by the court, judge or referee or jury, to be in possession of the garnishee, he may, at any time before final judgment, discharge himself by delivering the same to the sheriff.

SEC. 284. The judgment debtor or claimant may be required to attend before the court, judge or jury, for the purpose of giving any necessary information respecting property or effects alleged to be in the possession of the garnishee, and may be thereupon examined on oath concerning the same.

SEC. 285. In all cases of controversy between the judgment creditor and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

SEC. 286. Execution may be issued to collect any judgment rendered against a garnishee, as in ordinary cases of judgment against defendants.

SEC. 287. The earnings of a judgment debtor for personal services, at any time within sixty days next preceding the judgment against a garnishee, shall not be included in such judgment.

SEC. 288. No territorial or county treasurer, sheriff, constable or other public officer, shall be liable to answer as garnishee for moneys in his possession as such public officer, belonging to or claimed by any judgment debtor.

XXXI. EVIDENCE—COMPETENCY OF WITNESSES.

SEC. 289. All sane persons may be witnesses.
290. Interested witnesses may give evidence.
291. To whom the preceding section shall apply.
Adverse party may be a witness against an assignor.
Assignor not to be a witness.
292. Person convicted of a crime not to be excluded from giving evidence except the crime be perjury.
293. Who shall not be competent witnesses.
294. Persons who shall not be examined as wittnesses to encourage confidence.

SEC. 289. Every person of sound mind, suitable age and discretion, except as hereinafter provided, may be a witness in any action or proceeding.

SEC. 290. No person offered as a witness shall be excluded from giving evidence by reason of his interest in the event of the action, but such interest may be shown to effect his credibility.

SEC. 291. The last section shall not apply to a party to the action, nor to any person for whose immediate benefit it is prosecuted or defended. When any assignor of a thing in action or contract is examined as a witness on behalf of any person deriving title through or from him, the adverse party may offer himself as a witness to the same matter in his own behalf, and he shall be so received. But such assignor shall not be admitted to be examined in behalf of any person deriving title through or from him, against any executor or administrator.

SEC. 292. No person offered as a witness shall be excluded from giving evidence, by reason of conviction for crime, but such conviction may be shown to effect his credibility: *Provided*, That no person who shall have been convicted of the crime of perjury, shall be a competent witness in any case, unless such conviction shall have been reversed or unless he shall have received a pardon.

SEC. 293. The following persons shall not be competent to testify:

1st. Those who are of unsound mind, or intoxicated at the time of their production for examination.

2d. Children under ten years of age, who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly.

3d. Indians, or persons having more than one half Indian blood, in an action or proceeding to which a white person is a party.

SEC. 294. In order to encourage confidence, and to preserve it inviolate, the following persons shall not be examined as witnesses:

1st. A husband shall not be examined for or against his wife, nor a wife for or against her husband; nor can either, during marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other; nor to a criminal action or proceeding for a crime committed by one against the other;

2d. An attorney or counsellor shall not, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in the course of professional employment;

3d. A clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs;

4th. A regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action, as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient.

XXXII. MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES.

SEC. 295. No person to be compelled to attend as a witness out of his county, or unless his fees are paid for one days attendance.
296. What a subpœna may require besides personal attendance.
297 How a subpœna shall be issued.
298. Service of a subpœna.
Proof of service.
299. Person present in court may be required to testify.
300. Witnesses subpœnaed, liable for damages for non-attendance.
301. Witnesses subpœnaed failing to attend may be punished.
302. Court may issue an attachment for witnesses.
303. Provision for examining a prisoner.
304. When an order for such examination may issue.

SEC. 295. No person shall be obliged to attend as a witness before any court of record, judge, justice of the peace, commissioner, referee or other officer, in any civil action out of the county in which he resides, unless his residence be within twenty miles of such court, judge, justiee of the peace, commissioner, referee or other officer. And no person shall be compelled to attend as a witness in any civil action or proceeding, unless the fees be paid or tendered to him, which are allowed by law for one day's attendance as a witness, and for travelling to and returning from the place where the he is required to attend, provided such fees be demanded by him at the time of service of the subpœna.

SEC. 296. The subpœna may require not only the personal attendance of the person to whom it is directed, at a particular time and place to testify as a witness, but may also require him to bring with him any books, documents, or things under his control; but no public officer or person having the possession or control of public records or papers, which by law are required to be kept in any particular office or place, shall be compelled to produce the same in any court.

SEC. 297. The subpœna shall be issued as follows:

1st. To require attendance before a court of record, or at the trial of an issue therein, it shall be issued in the name of the United States, and be under the seal of the court before which the attendance is required, or in which the issue is pending;

2d. To require attendance out of such a court, before a judge, justice of the peace, commissioner, referee or other officer authorized to administer oaths, or to take testimony in any matter under the laws of this territory, it shall be issued by such judge, justice of the peace, commissioner, referee or other officer before whom the attendance is required;

3d. To require attendance before a commissioner appointed to take testimony by a court of any other state, territory or county, it may be issued by any judge or justice of the peace, in places within their respective jurisdictions.

SEC. 298. Such subpœna may be served by any white person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

SEC. 299. A person present in court or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

SEC. 300. If any person duly served with a subpœna, and obliged to attend as a witness, shall fail so to do, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action.

SEC. 301. Such failure to attend, as required by the subpœna, shall also be considered a contempt, and upon due proof, the witness may be punished by a fine not exceeding fifty dollars, and stand committed until said fine and costs are paid or until discharged by due course of law.

SEC. 302. The court, judge, justice of the peace or other officer, in such case, may issue an attachment to bring such witness before them to answer for contempt, and also to testify as witness in the cause in which he was subpœnaed.

SEC. 303. If the witness be a prisoner confined in a jail or prison within this territory, an order for his examination in prison, upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be issued.

SEC. 304. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

XXXIII. EXAMINATION OF PARTIES.

SEC. 305. A party to an action mny be examined as a witness.
306. Interrogatories may be filed instead of an examination on trial.
307. Interrogatories to be answered within twenty days.
308. Filing interrogatories not to preclude examination on trial.
309. Testimony of a party may be rebutted.
310. Proceedings when a party refuses to give evidence.
311. When a party may testify against an adverse party.
312. A person interested may be examined under the same rules as a party to the action.

SEC. 305. A party to an action or proceeding may be examined as a witness, at the instance of the adverse party, or of one of several adverse parties, and for that purpose may be compelled in the same manner, and subject to the same rules of examination as any other witness to testify at the trial, or he may be examined on a commission.

SEC. 306. Instead of the examination being had at the trial, as provided by the last section, the plaintiff, at the time of filing his complaint or afterwards, and the defendant, at the time of filing his answer or afterwards, may file in the clerk's office, interrogatories for the discovery of facts and documents material to the support or defense of the action, to be answered on oath by the adverse party.

SEC. 307. Such interrogatories shall be answered, and such answers filed in the clerk's office within twenty days after the same are served on the party interrogated, unless for cause shown, a further time be allowed by the court or judge thereof.

SEC. 308. A party to an action having filed interrogatories to be answered by the adverse party, as prescribed by the last two sections, shall not thereby be precluded from examining such adverse party as a witness at the trial.

SEC. 309. The testimony of a party, either upon an examination at the trial, or upon interrogatories filed, may be rebutted by adverse testimony, Sec. 310. If a party refuse to attend and testify at the trial, or to be examined upon a commission, or to answer any interrogatories filed, his complaint, answer, or reply may be stricken out, and judgment taken against him, and he may also, in the discretion of the court, be proceeded against as in other cases for a contempt: *Provided*, That the preceding sections shall not be construed so as to compel any person to answer any question, where such answer may tend to criminate himself.

Sec. 311. A party examined by an adverse party, as in this act provided, may be examined on his own behalf in respect to any matter pertinent to the issue. But if he testify to any new matter not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness on his own behalf, in respect to such new matter, and shall be received.

Sec. 312. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner, and subject to the same rules of examination, as if he were named as a party.

XXXIV. OF DEPOSITIONS.

Sec. 313. When depositions in this territory may be taken.
314. Before whom, and on what notice such depositions may be taken.
415. Manner of taking depositions.
316. To whom the deposition shall be delivered.
317. Deposition may be used by either party.
Objections may be made.
How the deposition shall be taken.
318. When deposition shall not be used.
319. Depositions may be used in two different actions.
320. Depositions may be used in an appellate court.
321. Witnesses may be compelled to give deposition in the same manner as other evidence.

Sec. 313. The testimony of a witness in this territory may be taken by deposition, to be read in evidence in any action, suit, or proceeding commenced and pending in any court in this territory, in the following cases:

1st. When the witness resides out of the county, and more than twenty miles from the place of trial;

2d. When the witness is about to leave the county, and go more than twenty miles from the place of trial, and there is a probability that he will continue absent when the testimony is required;

3d. When the witness is sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial.

Sec. 314. Either party may have the deposition of a witness taken in this territory, before any judge, of the district court, justice of the peace, clerk of the supreme or district courts, mayor of a city, or notary public, on serving on the adverse party or his attorney previous notice of the time and place of examination. Such notice shall be at least three days, and in addition one day, Sundays excepted, for every ten miles of the distance of the place of examination from the residence of the person to whom notice is given.

SEC. 315. The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person in the presence and under the direction of such officer. When completed, it shall be carefully read to or by the witness, corrected if desired, and subscribed by him, and certified by the officer substantially as follows:

Territory of Washington, } ss.
County of———. }

I, A. B., justice of the peace, in, and for said county (or judge, clerk, &c., as the case may be) do hereby certify that the above deposition was taken before me, and reduced to writing by myself (or witness, as the case may be,) at ——— in said county, on the ——— day of ——— 18— at ——— o'clock, in pursuance of notice hereto annexed that the above named witness, before examination, was sworn (or affirmed) to testify the truth, the whole truth and nothing but the truth, and that the said deposition was carefully read to (or by) said witness, and then subscribed by him.

Dated at ——— the ——— day of ——— 18 .

A. B. justice of the peace.

SEC. 316. The deposition shall be enclosed in a sealed envelope by the officer taking the same, and directed to the clerk of the court, arbitrators, referee or justice of the peace, before whom the action is pending, or to such person as the parties in writing may agree upon, and either delivered to the clerk of the court, or other person, or transmitted through the mail or by some private opportunity.

SEC. 317. Such deposition may be used by either party, upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions, to the competency or credibility of the witness, or the manner of taking the deposition. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was taken at the time of the examination. It shall be the duty of the person taking the deposition to propound to the witness every question proposed by either party, and to note all objections to the form of any interrogatory, and when any interrogatory is objected to on account of form, unless the form is amended and the objection waived, he shall write after the question, and before the answer, the words "objected to," and when any witness declines to answer a question on the ground that it will tend to criminate himself, that fact shall also be noted after the question is written down. The deposition may be taken in the form of a narative, or by question and answer, or partly in either form, as either party present at the examination shall require. When taken by question and answer, the officer shall first write down the question, and then the answer as nearly as may be in the language of the witness; but when the deposition is read to the witness previous to signing it, he shall be permitted to amend his answer to any question, or any part of his deposition; such amendment however, unless both parties shall otherwise agree, shall not be made by way of interlining or erasing, but shall be added at the end of the deposition, under the title "amendment by the witness," and such amendment shall intelligibly refer to the part so amended.

SEC. 318. No deposition shall be used if it appear that the reason for taking it no longer exists: *Provided*, however, that if the party producing the deposition in such case, shall show any sufficient cause then existing for using such deposition, it may be admitted.

SEC. 319. When the plaintiff in any action shall discontinue it, or when it shall be dismissed for any cause, and another action shall afterwards be commenced for the same cause between the same parties, or their respective representatives, all depositions lawfully taken in the first action may be used in the other in the same manner, and subject to the same conditions and objections as if originally taken for such other action: *Provided*, That the deposition shall have been duly filed in the court where the first action was pending, and shall remain in the custody of the court, from the termination of the first action until the commencement of the other.

SEC. 320. When any action shall have been appealed from one court to another, all depositions lawfully taken to be used in the court below, may be used in the appellate court in the same manner, and subject to such exemptions for informality or irregularity and none other, as were taken to such depositions in writing in the court below.

SEC. 321. Any witness may be subpœnaed and compelled, by any officer authorized to take depositions, to appear and give his deposition at any place within twenty miles of the abode of such witness, in like manner and under the same penalties as he may be subpœnaed and compelled to attend as a witness in any court.

XXXV. OF DEPOSITIONS TAKEN OUT OF THE TERRITORY.

SEC. 322. Depositions may be taken out of the territory.
323. Commission to take deposition. To whom issued.
324. Interrogatories to be annexed to the commission, or may be dispensed with.
325. Authority granted by the commission.
326. Trial not to be postponed because the commission is not returned, except on affidavit.

SEC. 322. The testimony of a witness out of this territory, may be taken by deposition, to be read in evidence in any action, suit, or proceeding, pending in any court in this territory.

SEC. 323. The deposition of a witness out of the territory, shall be taken upon a commission issued by the clerk, under the seal of the court, upon an order of the court, or a judge thereof, which order may be made on the application of either party, upon giving to the adverse party, or his attorney, ten days previous notice, in writing, together with a copy of the interrogatories intended to be put to such witness. It shall be issued to a person or persons, not exceeding three in number, agreed upon by the parties, or their attornies, or if they do not agree, to any judge, justice of the peace, notary public, or other competent person, selected by the court or judge granting the order for the commission.

SEC. 324. Such proper interrogatories, as well on part of the plaintiff as on part of the defendant, as the respective parties may prepare to be settled, if they disagree as to form, by the court or judge thereof, granting the order for the commission, shall be annexed to the commission; or where the parties agree to that mode, the examination may be without written interrogatories.

SEC. 325. The commission shall authorize the commissioner or commissioners to administer an oath to the witness, and to take his deposition in answer to the several interrogatories annexed to such commission; or when the examination is to be without interrogatories, in respect to the question in dispute, to certify the deposition to the court, and to direct it to the clerk of the court, or such other person designated or agreed upon, and forward it to him by mail or other usual channel of conveyance.

SEC. 326. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon affidavit or other evidence, satisfactory to the court, that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

XXXVI. OF PROCEEDINGS TO PERPETUATE TESTIMONY.

SEC. 327. Steps to be taken by a person wishing to perpetuate testimony.
328. Preparation for taking such testimony by hearing parties.
329. After hearing of parties, a commission may issue as in other cases.
330. How such depositions shall be taken.
331. Deposition may be used, subject to legal objections.

SEC. 327. When any person shall be desirous to perpetuate the testimony of any witness, he shall make a statement in writing, setting forth briefly and substantially, his title, claim, or interest, in or to the subject concerning which he desires to perpetuate the evidence, and the names of all persons interested, or supposed to be interested therein, and also the name of the witness proposed to be examined, which statement shall be under oath, and filed in the district court. If the subject of the proposed deposition relate to real estate within this territory, the statement shall be filed in the county where the lands, or any part thereof, lie, otherwise in the county where the parties interested, or some of them, reside. Upon such statement, an application may be made to such court, or a judge thereof, to allow the examination of such witness.

SEC. 328. The court or judge shall appoint a time and place for hearing such application, and shall order notice thereof, and of the statement, to be served on all persons mentioned therein as adversely interested in the matter. The notice shall be served personally on all those living in the territory, at least twenty days before the time of hearing the application.—Upon those who are not residents of the territory, it shall be served by publication or otherwise, in the same manner as a summons is served upon a non-resident.

SEC. 329. If upon such hearing of the parties, or of the applicant alone, should no adverse party appear, the court or judge shall be satisfied that there is sufficient cause for taking the deposition, an order shall be made allowing the examination of the witness; and such court or judge shall direct a commission to issue therefor, in like manner as a commission to take the testimony of witnesses in other cases.

SEC. 330. The deposition of such witness, whether residing in this territory or not, shall be taken upon written interrogatories filed by the applicant, and cross interrogatories filed by any party adversely interested, if he shall think fit, and it shall be taken and returned substantially in the same manner as if taken upon commission, to be used in any cause pending in the same court.

SEC. 331. The deposition, when returned, shall be filed in the office of the clerk of the court by whom the commission was issued, and if a trial be had between the person at whose request the deposition was taken, and the persons named in the statement, or any of them, or their successors in interest, upon proof of the death or insanity of the witness, or of his inability to attend the trial, by reason of age, sickness, or settled infirmity, the deposition, or a certified copy thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objections to the form of the interrogatory shall be made at the trial, unless the same were taken at the time of the examination.

XXXVII. PROVISIONS RELATING TO RECORDS, DOCUMENTS, AND OTHER WRITINGS.

SEC. 332. Each party may have access to all papers in the case.
333. When an instrument may be read without proof of its genuineness.

SEC. 334. Records of other courts to be admissable.
335. Copies of instruments of writing, when admissable.
336. Certified copies of official papers admissable.
337. Surveyor general's certificate admissable.
338. How a seal may be affixed to be valid.
339. Printed copies of laws, printed by authority, admissable.

SEC. 332. Any court in which an action is pending, or a judge thereof, may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of any book, document, or paper in his possession, or under his control, containing evidence relating to the merits of the action, or the defence therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be, and the court may also punish the party refusing, as for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers, or documents, where he is examined as a witness.

SEC. 333. If either party, at any time before trial, allow the other an inspection of any writing, material to the action, whether mentioned in the pleadings or not, and deliver to him a copy thereof, with notice that he intends to read the same in evidence on the trial of the cause, it may be so read without proof of its genuineness or execution, unless denied by affidavit before the commencement of the trial. If such denial be made of any writing, not mentioned in the pleadings, the court may give time to either party to procure evidence, when necessary for the furtherance of justice.

SEC. 334. The records and proceedings of any court of the United States, or of any state or territory, shall be admissable in evidence, in all cases in this territory, when authenticated by the attestation of the clerk, prothonotary, or other officer having charge of the records of such court, with the seal of such court annexed.

SEC. 335. Whenever any deed, conveyance, mortgage, bond, or other writing shall have been recorded or filed, in pursuance of law, copies of such deed, conveyance, bond, or other writing, duly certified by the officer having the lawful custody thereof, with the seal of office annexed, if there be such seal, if no seal, then with the official certificate of such officer, shall be received in evidence, to all intents and purposes, as the originals themselves.

SEC. 336. Copies of all papers, on file in the offices of the surveyor generals of Oregon and Washington territories, secretary of Washington territory, territorial treasurer, territorial auditor, and any county treasurer, or any matter recorded in either of said offices, duly certified by the respective officers, with the respective seals of office annexed, shall be evidence in all the courts of this territory.

SEC. 337. Any certificate of residence and cultivation upon the public lands, issued by the surveyor general of Oregon or of Washington territories, in pursuance of law, shall be evidence in all courts in this territory.

SEC. 338. A seal of a court or public office, when required to any writ, process, or proceeding, or to authenticate a copy of any record or document, may be affixed by making an impression directly on the paper, which shall be as valid as if made upon a wafer or on wax.

SEC. 339. Printed copies of the statute laws of any state, territory, or foreign government, if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this territory, and on all other occasions as presumptive evidence of such laws.

XXXVIII. OF WRITS OF ERROR AND APPEALS.

SEC. 340. Every judgment, decision, or order, may be re-examined on a writ of error.
341. Limitation of time for prosecution of writs of error.
342. Proceedings of the party to obtain a writ of error.
343. Notice of the prosecution of a writ of error to be served on the adverse party; how.
344. Duty of the clerk upon the filing of the precipe.
345. What shall be a transcript of the record.
346. Provisions when transcript is not received.
347. When the case shall stand for trial.
348. Manner of proceeding with the trial.
349. Bond may be given to stay execution.
350. Judgment of the supreme court; execution thereof.
351. When judgment is affirmed, damages, interest, and costs to be allowed thereon.
352. Who may prosecute a writ of error and receive the benefit thereof.
353. When order shall be made for another person to be made a party to a writ of error.
354. Reversal of a judgment not to effect a title.
355. When all the judges of the supreme court to be present.
356. District court may direct an appeal. Judgment in such cases not to be executed until final decision.
357. Supreme court may adjudge and decide all cases of appeal, and shall not reverse any case, unless injustice has been done the plaintiff in error.
358. All cases heretofore decided, may be appealed under the provisions of this statute.

SEC. 340. Every final judgment, order, or decision of a district court, in a civil action, may be re-examined upon a writ of error, in the same court for error in fact, and in the supreme court for error in law.

SEC. 341. Every such writ shall be prosecuted within two years, and not after. But if the party entitled to have such writ shall be absent from the territory, and shall not have been personally served with process, nor appeared to the action, or if such party be an infant, married woman, or imprisoned, or insane, then such writ may be prosecuted within two years from the removal of such disability, and not after: *Provided*, That absence from the territory shall not entitle the party to a longer time than five years; the time limited shall include the day on which the judgment is rendered, or the order of decision is made, or on which the disability ceases.

SEC. 342. The party desirous of taking his writ of error, shall file with the clerk of the court in which the judgment was rendered, a precipe, containing a particular description of the judgment, order, or decision, upon which he wishes to bring his writ of error and his claim, whether upon error in fact or error in law; which precipe shall also contain an order directing the clerk to issue, under the seal of the court, notice to the adverse party of the filing of such precipe, and of the court and term at which such writs of error will be prosecuted; and the writ of error shall be deemed to have issued at the time of the filing of such precipe.

SEC. 343. The notice shall be issued and served in the same manner that a summons is served, and shall be returned to the court in which such writ of error is to be prosecuted, by the first day of the term at which said writ of error is to be heard. It may be served on the defendant, or his attorney of record, in any county in the territory. And if service of the notice cannot be had from any cause, the court, at such term, upon being satisfied that the precipe has been filed and notice issued, may direct the manner in which such notice shall be given; and after the order for giving notice has been fully complied with, may proceed as though notice had actually been given.

SEC. 344. Upon the filing of such precipe, and the payment of his fees, the clerk shall issue the notice to the defendant in error; and if the precipe direct the return of the writ of error to the supreme court, he shall make out a full transcript of the record, and send the same to the clerk of the supreme court, by mail or other safe opportunity.

SEC. 345. The transcript of the record shall contain a copy of the writ and return, the pleadings, the journal entries, judgment, order or decision, bills of exception, execution and return, and all matters pertaining to the case, but it shall not be necessary to send copies of subpœnas, motions, or depositions, unless the same, by bill of exceptions, have been made part of the record.

SEC. 346. Whenever from any cause the transcript of the record shall not be received by the clerk of the supreme court, or shall be lost, the court shall order a new transcript to be sent up, in such time and manner as they shall see fit: *Provided*, That in all cases where the failure arises from the neglect of the plaintiff in error, to comply with the provisions of this act, the writ of error or appeal shall be dismissed. Either party may, upon a suggestion of a diminution of the record, and upon a proper case made, have an order that a further record be sent up.

Sec. 347. If the notice shall have been served ten days or more before the term of the court to which the record is returnable, the case shall stand for trial at such term; and it may stand for trial, if the parties appear in court, bring in the record, and waive the notice.

Sec. 348. The court of error may fix the time for assigning errors and filing joinders. If errors in law be assigned, no joinder shall be necessary. One or more errors in fact may be assigned, and the defendant may put in the common joinder as a demurrer thereto, or may traverse or confess, and avoid the facts assigned for error, and a separate issue shall be made on each.

Sec. 349. If at the time of filing the precipe with the clerk, or at any time thereafter, the plaintiff in error shall file with the clerk a bond, with sureties to the satisfaction of the clerk, in double the amount of the judgment, if it is for money, and if the judgment is for the restraining or performing any other act, or the determination of any other right, then in such a sum as a judge of the supreme court shall direct, conditioned that the plaintiff pay all costs and damages, and perform such judgment, as the court on the trial of the writ of error shall adjudge against him, then no further execution shall be had upon the original judgment, until the determination of the writ of error, and any execution previously issued shall be recalled.

Sec. 350. The judgment, or other matter complained of, may be affirmed, or may be reversed or set aside, in whole or in part, or may be modified, or a different judgment or order may be substituted for that complained of, and the cause may be remitted to the district court for such further proceedings as the supreme court by mandate shall direct. Execution may issue from the supreme court, or its judgments may be executed by the district court, on a mandate for that purpose.

Sec. 351. In case the judgment of the court below shall have been for a sum of money, and shall be affirmed against the plaintiff in error, damages may be awarded to the defendant in error, not exceeding ten per cent on the amount, exclusive of interest, and costs of such judgment. And in all cases, interest and costs shall be allowed on the original judgment.

Sec. 352. Any person who may be a party, or privy to any judgment, order, or decision, may prosecute a writ of error to reverse the same, and the reversal shall inure to the benefit of all parties and privies therein, and no other party or privy shall afterwards prosecute a writ of error for the same cause.

Sec. 353. When it shall appear that any other person should be made a party to any proceeding upon a writ of error, the court shall require such person to be made a party, and shall direct in what manner notice shall be given.

SEC. 354. The reversal of a judgment, order, or decision, shall not affect the title of property sold upon an execution, issued upon such judgment, order, or decision, if such property be purchased at the sale by a stranger, but if purchased by the judgment creditor, the plaintiff in error may bring an action for the recovery thereof, and the court may award restitution, or render such other judgment as justice shall require.

SEC. 355. When the supreme court shall be equally divided in opinion, the cause shall stand continued until all the judges are present.

SEC. 356. Whenever upon the trial of any civil action in the district court, it shall be found to turn upon important questions of law, the court may direct a special verdict to be found; and in all cases the parties may make an agreed statement of facts, signed by themselves or their attorneys, which shall be entered of record; and all questions of law, arising on special verdicts, agreed statements, motions for new trial, and others, in any manner arising in the district court, may, under the direction of the district court, be taken to the supreme court, by way of appeal; and for that purpose, the court shall render a judgment in form only, which shall not be executed until the final decision of the cause, and the supreme court, on hearing the appeal, may give judgment, or remand the cause, or make any order, according to the law and justice of the case.

SEC. 357. In all cases of writs of error or appeals, in the supreme court, the court shall consider and adjudge upon all errors and mistakes which shall appear in the entire record by which plaintiff in error may have been prejudiced, if the same were excepted to at the time, whether interlocutory or final, and whether the plaintiff in error had, according to the strict rules of law, waived the same by proceeding with the case, under the order of the court, after such exception taken: *Provided,* That the court shall consider all amendments which could have been made, as made, and in such case shall not reverse any judgment, order, or decision, unless it shall appear that injustice may have been done, and the plaintiff in error, or his attorney, shall make oath that injustice has been done him in the judgment which is sought to be reversed.

SEC. 358. All cases, either in law or equity, which have heretofore been decided in this territory, may at any time within the time limited in this act, be examined upon a writ of error, under the provisions of this act, and in adjudging upon such cases, the court shall be governed in their judgment on errors by the rules of the commom law.

XXXIX. SET-OFF.

SEC. 359. Against whom set-off may be made.
360. Set-off when plaintiff is trustee, or nominal.
361. Set-off against executors and administrators.
362. Judgment for excess of set-off.
363. Representatives may set-off as if the action were against them.
364. Set-off must be set-off in the answer.
365. When set-off is equal to the demand, judgment to be for nothing; and when not equal, for the residue.
366. Judgment against plaintiff for excess.

SEC. 359. The defendant in a civil action, upon a contract expressed or implied, may set off any demand of a like nature against the plaintiff in interest, which existed and belonged to him at the time of the commencement of the suit. And in all such actions, other than upon a negotiable promissory note, or bill of exchange, negotiated in good faith, and without notice before due, which has been assigned to the plaintiff, he may also set off a demand, of a like nature, existing against the person to whom he was originally liable, or any subsequent assignee prior to the plaintiff, of such contract: *Provided*, Such demand existed at the time of the assignment thereof, and belonged to the defendant in good faith before notice of such assignment, and was such a demand as might have set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.

SEC. 360. If the plaintiff be a trustee for any other, or if the action be in the name of a plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off, as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

SEC. 361. In actions brought by executors and administrators, demands against their testators and intestates, and belonging to defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased.

SEC. 362. When a set off shall be established in an action brought by executors or administrators, and a balance found due to the defendant, the judgment rendered thereto against the plaintiff's, shall have the same effect as if the action had been originally commenced by the defendant.

SEC. 363. In actions against executors and administrators, and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates, or those whom they represent, in the same manner as the persons so represented would have been entitled to set off the same in an action against them.

Sec. 364. To entitle a defendant to a set off, he must set the same forth in his answer.

Sec. 365. If the amount of the set off, duly established, be equal to the plaintiff's debt or demand, judgment shall be entered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

Sec. 366. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered in favor of the defendant for the amount thereof, but no such judgment shall be rendered against the plaintiff, when the contract, which is the subject of the action, shall have been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff in the action.

XL. COSTS IN CIVIL ACTIONS.

Sec. 367. Compensation of attorneys left to the parties; costs.
368. To whom costs shall be allowed.
369. Plaintiff in certain cases not entitled to costs.
370. In certain cases the plaintiff entitled to no more costs than damages.
371. When several actions are joined in one, costs to be recovered in any one.
372. Where costs are not allowed to plaintiff, must be to defendant.
373. Costs to be awarded to such defendants as have judgment in their favor.
374. Amount of costs in each kind of action.
375. Costs allowed to the prevailing party.
376. Fees and rate of compensation of referees.
377. When application is made to postpone, the adverse party to be paid ten dollars and witnesses fees.
378. When a tender has been made the plaintiff must pay costs.
379. If a defendant deposit the amount claimed with the clerk and the plaintiff refuse it, he shalll be liable for costs.
380. In cases of appeal the failing party to pay costs.
381. The person who appears for an infant to pay costs.
382. Executor, administrator or trustee to pay costs from the estate or property in trust.
383. Assignee of an action to be liable for costs.
384. County or territory liable for costs as other parties.
385. When costs to be awarded and collected as the court may direct.
386. When the costs of an appeal to be in the discretion of the court.
387. In all actions not provided for, costs left to the discretion of the court.
388. Relief of party aggrieved.
389. When and what security for costs may be demanded.

Sec. 367. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement express or implied of the parties, but there may be allowed to the prevailing party upon the judgment, certain sums by way of indemnity for his expenses in the action, which allowances are termed costs.

Sec. 368. Costs shall be allowed the party in whose favor the judgment is rendered, except as is otherwise provided by law.

SEC. 369. The plaintiff shall not be entitled to costs in any action within the jurisdiction of a justice of the peace, which shall be commenced in the district court, where the recovery is for a less amount than one hundred dollars.

SEC. 370. In an action for an assult or an assault and battery, or for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recover less than ten dollars, he shall be entitled to no more costs or disbursements than the damages recovered.

SEC. 371. When several actions are brought on one bond, undertaking, promissory note, bill of exchange or other instrument in writing, or in any other case for the same cause of action against several parties, who might have been joined as defendants in the same action, no costs or disbursements shall be allowed to the plaintiff in more than one of such actions which may be at his election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this territory.

SEC. 372. In all cases where costs and disbursements are not allowed to the plaintiff, the defendant shall be entitled to have judgment in his favor for the same.

SEC. 373. In all actions where there are several defendants, not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of defendants as have judgment in their favor, or any of them.

SEC. 374. When allowed to either party, costs shall be as follows:

1st. In all actions settled before issue is joined, five dollars;

2d. In all actions where judgment is rendered without a jury, ten dollars;

3d. In all actions where judgment is rendered after impanneling a jury, fifteen dollars;

4th. In all actions removed to the supreme court and settled before argument, ten dollars;

5th. In all actions when judgment is rendered in the supreme court after argument, fifteen dollars.

SEC. 375. The prevailing party, in addition to the allowance for costs as provided in the last section, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The disbursements shall be stated in detail and verified by affidavit, which shall be filed with the clerk of the court.

SEC. 376. The fees of referees shall be four dollars to each, for every day spent in the business of the reference, but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Sec. 377. When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

Sec. 378. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, in such specie as by agreement ought to be tendered; and thereupon brings into court, for the plaintiff, if in money, the amount so tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant.

Sec. 379. If the defendant in any action pending shall at any time deposit with the clerk of the court, for the plaintiff, the amount which he admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk, exclusive of interest and cost, he shall pay all costs that may accrue from the time such money was so deposited.

Sec. 380. In all civil actions tried before a justice of the peace, in which an appeal shall be taken to the district court, and the party appellant shall not recover a more favorable judgment in the district court than before the justice of the peace, such appellant shall pay all costs accruing after the appeal.

Sec. 381. When costs are adjudged against an infant plaintiff, the guardian or person by whom he appeared in the action, shall be responsible therefor, and payment may be enforced by execution.

Sec. 382. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting or defending in his own right, but such costs shall be chargeable only upon or collected off the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defense.

Sec. 383. When the cause of action after the commencement of the action by assignment, or in any other manner becomes the property of a person not a party thereto, and the prosecution or defense is thereafter continued, such person shall be liable to the costs in the same manner as if he were a party, and payment thereof may be enforced by attachment.

Sec. 384. In all actions prosecuted in the name and for the use of the territory, or in the name and for the use of any county, the territory or county shall be liable for costs in the same cases and to the same extent as private parties.

SEC. 385. When the decision of a court of inferior jurisdiction in an action or special proceeding is brought before the supreme court, or a district court, for review, such proceedings shall for purposes of costs be deemed an action at issue upon a question of law from the time the same is brought into the supreme court, or district court, and costs thereon may be awarded and collected in such manner as the court shall direct, according to the nature of the case.

SEC. 386. In the following cases the costs of an appeal to the supreme court shall be in the discretion of the court:

1st. When a new trial shall be ordered ;

2d. When a judgment shall be affirmed in part and reversed in part.

SEC. 387. In all actions and proceedings than those mentioned in this chapter, where no provision is made for the recovery of costs, they may be allowed or not, and if allowed, may be apportioned between the parties in the discretion of the court.

SEC. 388. Any party aggrieved by the taxation of costs by the clerk of the court, may upon application have the same re-taxed by the court in which the action or proceedings is had.

SEC. 389. When the plaintiff in an action resides out of the county, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until a bond executed by two or more persons be filed with the clerk, conditioned that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of two hundred dollars. A new or additional bond may be ordered by the court, or judge, upon proof that the original bond is insufficient security, and proceedings in the action stayed until such new or additional bond be executed and filed. The plaintiff may deposit with the clerk, the sum of two hundred dollars in lieu of a bond.

XLI. COMMISSIONER TO SELL REAL ESTATE.

390. District courts may appoint a commissioner.
391. What shall be the deed of the commissioner.
392. A sale in pursuance of a judgment, conveys the title of the parties ordered to sell.
393. Sale of the commissioner conveys the title of the parties to the action.
394. A conveyance of a court must be approved by the court.
395. Such conveyance to be signed by the court only.
396. Such conveyance to be recorded.
397. How judgment to compel a party to execute a conveyance shall be enforced.

SEC. 390. The several district courts may whenever it is necessary, appoint a commissioner to convey real estate.

1st. When by a judgment in an action a party is ordered to convey real property to another or any interest therein:

2d. When real property or any interest therein has been sold under a special order of court and the purchase money paid therefor.

SEC. 391. The deed of the commissioner shall so refer to the judgment authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally.

SEC. 392. A conveyance made in pursuance of a judgment, shall pass to the grantee the title of the parties ordered to convey the land.

SEC. 393. A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding.

SEC. 394. A conveyance by a commissioner shall not pass any right until it has been examined and approved by the court, which approval shall be endorsed on the conveyance and recorded with it.

SEC. 395. It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the names of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance.

SEC. 396. The conveyance shall be recorded in the office in which by law it should have been recorded, had it been made by the parties whose title is conveyed by it.

SEC. 397. In case of a judgment to compel a party to execute a conveyance of real estate, the court may enforce the judgment by attachment or sequestration, or appoint a commissioner to make the conveyance.

XLII. TO RECOVER THE POSSESSION OF REAL PROPERTY AND TO DETERMINE CONFLICTING CLAIMS THERETO.

SEC. 398. Right to real property to be recovered by action in the district court.
399. Landlord to be substituted for tenant.
400. Proof required in an action by a tenant against a tenant.

SEC. 398. Any person having a valid subsisting interest in real property and a right to the possession thereof, may recover the same by action in the district court of the proper county, to be brought against the tenant in possession; if there is no such tenant then against the person claiming the title or some interest therein.

SEC. 399. Whenever it appears that the defendant is only a tenant, the landlord may be substituted, reasonable notice thereof being given.

SEC. 400. In an action by a tenant in common or joint tenant of real property against his co-tenant, the plaintiff must show in addition to his evidence of right that the defendant either denied the plaintiff's right or did some act amounting to such denial.

XLIII. PARTITION OF REAL ESTATE.

SEC. 401. Actions for the partition of real estate may be brought in the district court.
402. The court may order a division or sale of the property and a division of the proceeds.

SEC. 401. Action may be brought in the district court of the proper county for the partition of real property, held or possessed by joint tenants or tenants in common, or for the special assignment or determination of any right or interest therein by any person interested.

SEC. 402. The complaint shall conform as far as is practicable to the provisions of law regulating the practice in civil actions, and the court may require and cause to be made by order, a partition of the premises or a special assignment of the interest, or in case the partition or assignment is impracticable may order a sale of the property and a division of the proceeds, and shall in all respects adjudge as the nature of cases may require.

XLIV. FOR WASTE.

SEC. 403. Actions of waste to be subjects of actions as other wrongs.
Judgment of forfeiture and eviction.

SEC. 403. Wrongs heretofore remediable by action of waste shall be subjects of action as other wrongs in which there may be judgment for damages, forfeiture of the estate of the party offending, and eviction from the premises. Judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession where injury to to the estate in reversion shall be adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.

XLV. DISPUTED LAND CLAIMS.

SEC. 404. Injunctions may be granted in certain cases.

SEC. 404. When any two or more persons are opposing claimants under the laws of the United States to any land in this territory, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages, and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted, shall be set aside or modified as is provided generally for injunctions and restraining orders.

XLVI. FOR NUISANCE.

SEC. 404. What is a nuisance subject to action.
406. Who may bring an action for nuisance.
407. Nuisances may be enjoined or abated.

SEC. 405. The obstruction of any highway, or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, or whatever is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property so as to essentially interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action.

SEC. 406. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

SEC. 407. Where a proper case is made, the nuisance may be enjoined or abated, and damages recovered therefor.

XLVII. FORECLOSURE OF MORTGAGES.

SEC. 408. Mortgages may be foreclosed in the district court where default is made.
409. No agreement in the mortgage, the remedy is confined to the property mortgaged.
410. The court may order the mortgaged property sold.
Payment of the mortgage to satisfy the judgment.
411. When the property of the mortgage debtor may be levied on.
412. Proceedings when mortgage is foreclosed.
413. Mortgage shall not be foreclosed when another action is pending, nor judgment rendered when mortgage is about to be foreclosed.
414. Complaint for foreclosure, on which one installment is due and paid, to be dismissed or stayed.
415. When the court may order a sale of a portion of the property mortgaged.
416. When property cannot be sold in parcels, proceedings to be had.
417. Judgment on a mortgaged debt forecloses the mortgage.

SEC. 408. When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the district court of the county where the land, or some part thereof, lies to foreclose the equity of redemption contained in the mortgage.

SEC. 409. When there is no express agreement in the mortgage, nor any seperate instrument given for the payment of the sum secured thereby, the remedy of the mortgage shall be confined to the property mortgaged.

SEC. 410. In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs at any time before sale, shall satisfy the judgment.

SEC. 411. When there is an express written agreement for the payment of the sum of money secured, contained in the mortgage, or any separate instrument, the court shall direct, in the order of the sale, that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be levied of any property of the mortgage debtor.

SEC. 412. A copy of the order of sale and judgment shall be issued and certified by the clerk, under the seal of the court, to the sheriff, who shall thereupon proceed to sell the mortgaged premises, or so much thereof as may be necessary to satisfy the judgment, interest and costs, as upon execution; and if any part of the judgment, interests and cost remain unsatisfied, the sheriff shall forthwith proceed to levy the residue of the other property of the defendant.

SEC. 413. The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure.

SEC. 414. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into court the principal and interest due, with costs, at any time before final judgment, the complaint shall be dismissed. If such payment be made after final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the conrt shall direct at what time, and upon what default any subsequent execution shall issue.

SEC. 415. In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the court shall direct so much only of the premises to be sold as will be sufficient to pay the amount then due on the mortgage with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected.

SEC. 416. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue do not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgaged debtor, his heirs and assigns.

SEC. 417. Whenever an execution shall issue upon a judgment recovered for a debt secured by a mortgage of real property, the plaintiff shall endorse thereon a brief description of the mortgaged premises, and a sale of the mortgaged premises upon such execution shall foreclose the equity of redemption.

XLVIII. NE EXEAT.

SEC. 418. When an action may be commenced on a contract, before the time for performance expires.
419. Order of arrest to issue on affidavit, and service thereof; bond to be given and filed.
420. Defendant may enter into special bail; bail to be liable.
421. Defendant may be discharged by securing the performance of the contract.
422. By whom this proceeding may be had.
423. Defendant entitled to the benefit of *habeas corpus*.
424. Proceedings may be had before justice of the peace.
425. Proceedings may be had in county where defendant is.

SEC. 418. Actions may be commenced upon any agreement in writing before the time for the performance of the contract expires, when the plaintiff or his agent shall make and file an affidavit with the clerk of the proper court, that the defendant is about to leave the territory without performing or making provisions for the performance of the contract, taking with him property, moneys, credits or effects, subject to execution, with intent to defraud the plaintiff.

SEC. 419. Upon such affidavit being filed, the clerk shall issue an order of arrest and bail, directed to the sheriff, which shall be issued, served, and returned, in all respects as such orders in other cases; before such order shall issue, the plaintiff shall file in the office of the clerk, a bond with sufficient surety, to be approved by the clerk—conditioned, that the plaintiff will pay the defendant such damages and costs as he shall wrongfully sustain by occasion of the suit, which sureties shall justify as bail upon an arrest.

SEC. 420. The sheriff shall require the defendant to enter into a recognizance of special bail with sufficient surety, personally to appear on the first day of the court, at its next term, and abide the order of the court, and in default thereof, the defendant shall be committed to prison until discharged in due course of law; such special bail shall be liable for the principal, and shall have a right to arrest and deliver him up, as in other cases, and the defendant may give other bail.

SEC. 421. Instead of giving special bail as above provided, the defendant shall be entitled to his discharge from custody if he will secure the performance of the contract, to the satisfaction of the plaintiff.

SEC. 422. This proceeding may be had in favor of any surety, or other person, jointly bound with the defendant. It may also be prosecuted by the person in whose favor the contract exists, against any one or more of the persons bound thereby, upon filing such affidavit, when the co-contractors are non resident, or probably insolvent, or at the request of any one of them, when they are residents and solvent.

SEC. 423. The defendant may have the same remedy by writ of habeas corpus, as in other cases of arrest and bail.

SEC. 424. The proceedings may be had before justices of the peace, in all cases within their jurisdiction.

SEC. 425. The affidavit and bond may be filed, and proceedings had in any county where the defendants may be found.

XLIX. REMEDIES OF SURETIES AGAINST THEIR PRINCIPALS.

SEC. 426. Surety may require the obligee to bring an action.
427. Failure of obligee to comply releases surety.
428. Question of securityship may be tried as in other cases.
429. Property of the principal to be exhausted.
430. Judgment against sureties does not release the principal.
431. One surety may have an action against another.
432. No surety shall confess judgment when principal is ready for trial.
433. The provisions of this act extended to heirs, executors, &c.

SEC. 426. Any person, bound as surety upon any contract in writing, for the payment of money or the performance of any act when the right of action has accrued, may require by notice in writing, the creditor or obligee forthwith to institute an action upon the contract.

SEC. 427. If the creditor, or obligee, shall not proceed within a reasonable time to bring his action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon.

SEC. 428. When any action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of securityship to be tried, and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term, but such proceedings shall not affect the proceedings of the plaintiff.

SEC. 429. If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution upon, and first exhaust the property of the principal before a levy shall be made upon the property of the surety, and the clerk shall endorse a memorandum of the order upon the execution.

SEC. 430. When any defendant, surety in a judgment or special bail or replevin bail, or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been, or shall be compelled to pay any judgment, or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his official bond, shall be compelled to pay any judgment or any part thereof, by reason of any default of such officer, except for failing to pay over money collected, or for wasting property levied upon, the judgment shall not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his use.

SEC. 431. Any one of several judgment defendants, and any one of several replevin bail having paid and satisfied the plaintiff, shall have the remedy provided in the last section against the co-defendants, or co-sureties to collect of them the rateable proportion each is equitably bound to pay.

SEC. 432. No surety, or his representative, shall confess judgment, or suffer judgment by default in any case where he is notified that there is a valid defence, if the principal will enter himself defendant to the action, and tender to the surety or his representatives good security to indemnify him, to be approved by the court.

SEC. 433. The foregoing provisions of this act shall extend to heirs, executors, and administrators of deceased persons, but the provisions of the 427th section, shall not operate against persons under legal disabilities.

L. HABEAS CORPUS.

SEC. 434. Every person shall have the benefit of *habeas corpus*.
435. By whom application for a writ of *habeas corpus* shall be made, and what it shall specify.
436. By whom writs of *habeas corpus* shall be granted.
437. What is a writ of *habeas corpus*.
438. To be delivered without delay to the sheriff.
439. To be delivered to the person who is to serve without delay.
440. Of the service of the writ.
441. Of return of a writ of *habeas corpus*.
442. What shall be a return.
443. Of the trial of the return.
444. The cause to be heard and decided summarily.

SEC. 445. When the court shall not discharge the party, or enquire into the legality of the imprisonment.
446. Authority of the court on trial of *habeas corpus.*
447. When the writ may be had; plaintiff thereto.
448. Court to have power to compel attendance of witnesses, &c.
449. Officer not to be liable for obeying a writ of *habeas corpus.*
450. Warrant may be issued to bring a prisoner forthwith before the court to be tried.
451. Person causing the imprisonment may be arrested also.
452. Same proceedings as in case of *habeas corpus.*
453. Court may make temporary orders, and change the person.
454. Writs authorized by this act may be served on Sunday.
455. Of writs authorized under this act.
456. In whose favor writs of *habeas corpus* may be granted.

SEC. 434. Every person restrained of his liberty under any pretence whatever, may prosecute a writ of habeas corpus to enquire into the cause of the restraint, and shall be delivered therefrom when illegal.

SEC. 435. Application for the writ shall be made by complaint, signed and verified either by the plaintiff or by some person in his behalf, and shall specify

First. By whom the person, in whose behalf the writ is applied for, is restrained of his liberty; and the place where, (naming all the parties, if they are known, or describing them if they are not known.)

Second. The cause or pretence of the restraint according to the best of the knowledge and belief of the applicant.

Third. If the restraint be alleged to be illegal, in what the illegality consists.

SEC. 436. Writs of habeas corpus may be granted by the supreme court or district court, or by any judge of either court, whether in term or vacation, and upon application, the writ shall be granted without delay.

SEC. 437. The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the court or judge at such time and place as the court and judge shall direct, to do and receive what shall be ordered concerning him, and have then and there the writ.

SEC. 438. If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay.

SEC. 439. If the writ be directed to any other person it shall be delivered to the sheriff, and shall be by him served by delivering the same to such person without delay.

SEC. 440. If the person to whom such writ is directed cannot be found, or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by fixing of the same on some conspicuous place, either of his dwelling house, or where the party is confined or under restraint.

Sec. 441. The sheriff or other person to whom the writ is directed, shall make immediate return thereof, and if he refuse after due service to make return, the court shall enforce obedience by attachment.

Sec. 442. The return must be signed and verified by the person making it, who shall state

First. The authority or cause of the restraint of the party in his custody.

Second. If the authority shall be in writing, he shall return a copy and produce the original on the hearing.

Third. If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party in the hearing, unless prevented by sickness or infirmity, which must be shown in the return.

Sec. 443. The court or judge, if satisfied of the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in evidence. The new matter shall be verified, except in cases of commitment on a criminal charge. The return and pleadings may be amended without causing any delay.

Sec. 444. The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint, or for the continuation thereof, shall discharge the party.

Sec. 445. No court or judge shall enquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired in either of the cases following:

First. Upon any process issued on any final judgment of a court of competent jurisdiction.

Second. For any contempt of any court, officer, or body having authority in the premises to commit, but an order of commitment as for a contempt upon proceedings to force the remedy of a party is not included in any of the foregoing specifications.

Third. Upon a warrant issued from the district court upon an indictment or information.

Sec. 446. No person shall be discharged from an order of commitment issued by any judicial or peace officer, for want of bail, or in cases not bailable on account of any defect in the charge or process, or for alleged want of probable cause; but in all cases the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, let to bail, or recommit the prisoner as may be just and legal, and recognise witnesses when proper.

SEC. 447. The writ may be had for the purpose of letting a prisoner to bail in civil and criminal actions. When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified.

SEC. 448. The court or judge shall have power to require and compel the attendance of witnesses, and to do all other acts necessary to determine the case.

SEC. 449. No sheriff or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge made thereon.

SEC. 450. Whenever it shall appear by affidavit, that any one is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the court, or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or judge may cause a warrant to be issued reciting the facts, and directed to the sheriff or any constable of the county, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the court or judge to be dealt with according to law.

SEC. 451. The court or judge may also, if the same be deemed necessary, insert in the warrant, a command for the apprehension of the person charged with causing the illegal restraint.

SEC. 452. The officer shall execute the writ by bringing the person therein named before the court or judge, and the like return or proceedings shall be required and had as in case of writs of habeas corpus.

SEC. 453. The court or judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings that justice may require. The custody of any party restrained, may be changed from one person to another, by order of the court or judge.

SEC. 454. Any writ or process authorized by this act may be issued and served in cases of emergency, on Sunday.

SEC. 455. All writs and other process authorized by the provisions of this act shall be issued by the clerk of the court, and sealed with the seal of such court, and shall be served and returned forthwith, unless the court or judge shall specify a particular time for any such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed, and temporary commitments when necessary.

SEC. 456. Writs of habeas corpus shall be granted in favor of parents, guardians, masters and husbands, and to enforce the rights, and for the protection of infants and insane persons; and the proceeding shall in all cases conform to the provisions of this statute.

LI. MANDATE AND PROHIBITION.

SEC. 457. When and from what courts writs may issue.
458. To whom, and for what, they may issue.
459. How issued and made returnable.
460. First writ to be in the alternative or directory, as court shall direct.
461. Proceedings upon return of said writs.
462. Proceedings in case of judgment for plaintiff.
463. Power of court in reference to proceedings on such writ.
464. How obedience to such writs may be enforced.
465.. What writ of prohibition shall command.
466. Judgment of the court, what.
467. Costs, how awarded.

SEC. 457. Writs of mandate and prohibition may issue from the supreme and district courts of the territory, but such writs shall issue from the supreme court only when necessary for the exercise of its functions and powers.

SEC. 458. Writs of mandate may be issued to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law specially enjoins, or a duty resulting from an office, trust or station.

SEC. 459. The writ shall be issued upon affidavit and motion, and shall be attested and sealed, and made returnable as the court shall direct, and the person, body, or tribunal, to whom the same shall be directed and delivered, shall make return, and for neglect to do so, shall be proceeded against as for a contempt.

SEC. 460. The first writ shall be in the alternative or peremptory, as the court shall direct.

SEC. 461. Whenever a return shall be made to any such writ, issues of law and fact may be joined, and like proceedings shall be had for the trial of issues and rendering judgment, as in civil actions.

SEC. 462. In case a verdict shall be found for the plaintiff, where the writ is in the alternative, or if judgment be given for him, he shall recover damages, as in an action for a false return, against the party making the return, and a peremptory writ shall be granted without delay.

SEC. 463. The court shall have the same power to enlarge the time of making a return and pleading to such writ, and for filing any subsequent pleadings, and to continue such cause, as in civil actions.

SEC. 464. Obedience to such writs may be enforced by attachment, and fine and imprisonment, or both.

SEC. 465. The writ of prohibition shall command the court and party to whom it shall be directed, to refrain from any further proceedings in the matter therein specified, until the return of the writ, and the further order of the court thereon, and upon the return, to show cause why they shall not be absolutely restrained from any further proceedings in the matter.

SEC. 466. The court shall render judgment either that a prohibition absolute, restraining the court and party proceeding in the matter, do issue, or authorizing the court and party to proceed in the matter in question.

SEC. 467. Costs shall be awarded in these proceedings as in civil actions.

LII. INFORMATION.

SEC. 468. Against whom, and when an information may be filed.
469. When and by whom filed.
470. What to consist of.
471. What it shall set forth.
472. When filed, summons to issue.
473. Judgment when right to an office is contested.
474. Proceedings in case of judgment in favor of relator.
475. Order of court, how enforced.
476. Limitation of plaintiff's action for damages.
477. Several persons claiming same office, one information may be filed.
478. Defendant found guilty in certain cases, what judgment shall be rendered.
479. Proceedings for costs in case of judgment against a corporation.
480. Proceedings in case of property escheated or forfeited to the territory.
481. Who liable for costs upon an information.
482. When an information may be prosecuted to annul any letters patent, certificates, deeds, &c.
483. Proceedings in such cases.

SEC. 468. An information may be filed against any person or corporation in the following cases:

1st. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or any franchise within the territory, or any office in any corporation, created by the authority of the territory.

2d. Whenever any public officer shall have done, or suffered any act, which, by the provisions of law, shall work a forfeiture of his office.

3d. Where any association or number of persons shall act within this territory as a corporation, without being legally incorporated.

4th. Or, where any corporation do, or omit acts, which amount to a surrender or a forfeiture of their rights and privileges as a corporation, or where they exercise powers not conferred by law.

SEC. 469. The information may be filed by the prosecuting attorney of the district, in the district court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court, or other competent authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise, or corporation, which is the subject of the information.

SEC. 470. The information shall consist of a plain statement of the facts which constitute the grounds of the proceedings, addressed to the court.

SEC. 471. Whenever an information shall be filed against a person for usurping an office, by the prosecuting attorney, he shall also set forth therein the name of the person rightfully entitled to the office, with an averment of his right thereto; and when filed by any other person, he shall show his interest in the matter, and he may claim the damages he has sustained.

SEC. 472. Whenever an information is filed, a summons shall issue thereon, which shall be served and returned as in other actions. The defendant shall appear and answer, or suffer default, and subsequent proceedings be had as in other cases.

SEC. 473. In every case wherein the right to an office is contested, judgment shall be rendered upon the rights of the parties, and for the damages the relator may show himself entitled to, if any, to the time of the judgment.

SEC. 474. If judgment be rendered in favor of the relator, he shall proceed to exercise the functions of the office, after he has been qualified, as required by law, and the court shall order the defendant to deliver over all the books and papers in his custody, or within his power, belonging to the office from which he shall have been ousted.

SEC. 475. If the defendant shall refuse or neglect to deliver over the books and papers, pursuant to the order, the court, or judge thereof, shall enforce the order by attachment and imprisonment.

SEC. 476. When the judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the information, have his action for the damages at any time within one year after the judgment.

SEC. 477. When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons, in order to try their respective rights to the office or franchise.

SEC. 478. Whenever any defendant shall be found guilty of any usurpation of, or intrusion into, or unlawfully exercising any office, or any franchise within this territory, or any office in any corporation, created by the authority of this territory, or when any public officer, thus charged, shall be found guilty of having done, or suffered any act, which by the provisions of the law shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation, without having been legally incorporated, the court shall give judgment of ouster against the defendant, and exclude him from the office, franchise, or corporate rights~~;~~ and, in cases of corporations, that the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff.

SEC. 479. If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the court may cause the costs to be collected by execution, against the persons claiming to be a corporation, or by attachment against the directors, or other officers of the corporation, and shall restrain the corporation, appoint a receiver of its property and effects, take an account, and make a distribution thereof among the creditors: the prosecuting attorney shall immediately institute proceedings for that purpose.

SEC. 480. Whenever any property shall escheat or be forfeited to the territory, for its use, the legal title shall be deemed to be in the territory, from the time of the escheat or forfeiture; and an information may be filed by the prosecuting attorney in the district court, for the recovery of the property, alleging the ground on which the recovery is claimed, and like proceedings and judgment shall be had as in a civil action for the recovery of property.

SEC. 481. When an information is filed by the prosecuting attorney, he shall not be liable for the costs; but when it is filed upon the relation of a private person, he shall be liable for costs, unless the same are adjudged against the defendant.

SEC. 482. An information may be prosecuted for the purpose of annulling or vacating any letters patent, certificate or deed, granted by the proper authorities of this territory, when there is reason to believe that the same were obtained by fraud, or through mistake, or ignorance of a material fact, or when the patentee, or those claiming under him, have done or omitted an act, in violation of the terms on which the letters, deeds, or certificates, were granted, have, by any other means, forfeited the interest acquired under the same.

SEC. 483. In such cases, the information may be filed by the prosecuting attorney upon his relation, or by any private person, upon his relation, showing his interest in the subject matter, and the subsequent proceedings, judgment of the court, and awarding of cost, shall conform to the above provisions, and such letters patent, deed, or certificate, shall be annulled or sustained, according to the right of the case.

LIII. MISCELLANEOUS PROVISIONS.

SEC. 484. Effect of pleading sworn to by either party.
485. New party introduced into an action, to what notice entitled.
486. In computing time, what days included and excluded.
487. Certain charges, to what extent, actionable as slanderous.
488. Court or officer authorized to take bail; to have power to examine, on oath, as to sufficiency.
489. Bonds under this act not void for want of form.
490. Of actions for recovery of purchase money for sale of lands.
491. Notice required to be in writing.
492. Husband and wife, in what actions they may join.
493. Person required to give bail may deposit the amount with the clerk.
494. In what county action against a corporation may be brought.
495. Action for personal injury not abated by death.
496. Right of action of widow and children of a man killed in a duel.
497. Right of action in case of seduction.

Sec. 498. All other forms and rights of action for seduction abolished.
499. How execution levied upon real estate, owned jointly or in common. How upon personal property, owned jointly or in co-partnership.
500. Unsatisfied judgment on justices docket may be transferred to clerk of district court, and execution issued thereon.

Sec. 484. Pleadings sworn to by either party, in any case, shall not on the trial be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party.

Sec. 485. When a new party is introduced into an action, as a representative or successor of a former party, such new party is entitled to the same notice to be given, in the same manner, as required for defendants, in the commencement of an action.

Sec. 486. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last. If the last day be Sunday, it shall be excluded.

Sec. 487. Every charge of incest, fornication, adultery, or whoredom, falsely made by any person against a female; also, words falsely spoken of any person, charging such person with incest, or the infamous crime against nature, either with mankind or the brute creation, shall be actionable in the same manner as in the case of slanderous words, charging a crime, the commission of which would subject the offender to death, or other degrading penalties.

Sec. 488. Every court and officer authorized to take any bail or surety, shall have power to examine, on oath, the person offering to become such bail or surety, concerning his property, and sufficiency as such bail or surety.

Sec. 489. No bond, required under the provisions of this act, and intended as such bond, shall be void for want of form, or substance, or recital, or condition; nor shall the principal or surety on such account be discharged; but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect, in the same manner as though it were a perfect bond.

Sec. 490. In any action brought for the recovery of the purchase money against any person, holding a contract for the purchase of lands, the party bound to perform the contract, if not plaintiff, may be made a party, and the court, in a final judgment, may order the interest of the purchaser to be sold or transferred to the plaintiff, upon such terms as may be just, and may also order a specific performance of the contract in favor of the complainant, or the purchaser, in case a sale be ordered.

Sec. 491. In all cases where notice is required by this act, it must be in writing, and may be served by the proper officer, or any other person.

Sec. 492. Husband and wife may join in all causes of action arising from injuries to the person or character of either, and both of them, or from injuries to the property of either, and both of them, or arising out of any contract in favor of either, and both of them.

Sec. 493. Any person required to give bail, may deposit with the clerk the amount of money for which he is required to give bail, and thereupon be discharged from arrest.

Sec. 494. Any action against a corporation may be brought in any county where the corporation has an office for the transaction of business, or any person resides, upon whom process may be served against such corporation, unless otherwise provided in this act.

Sec. 495. No action for a personal injury to any person, occasioning his death, shall abate, nor shall such right of action determine by reason of such death, if he have a wife and child living; but such action may be prosecuted, or commenced and prosecuted, in favor of such wife, or in favor of the wife and children, or if no wife, in favor of such child or children.

Sec. 496. The widow, or widow and children, or child or children, if no widow, of a man killed in a duel, shall have a right of action against the person killing him, and against the seconds, and all aiders and abettors, and shall recover such a sum as to the jury shall seem reasonable.

Sec. 497. The seduction of an innocent unmarried female, shall in itself constitute a good cause of action, in the name of the party injured, and against the party committing the injury, his aiders and abettors:—*Provided,* That in all cases the damages recovered shall be for the exclusive benefit of the said injured party.

Sec. 498. All other forms and rights of action, to recover damages for seduction, or for the consequences thereof, by any other person than the party injured, are hereby abolished: *Provided,* That nothing herein contained shall be construed to prevent actions for the support of bastards, being maintained by the proper authorities.

Sec. 499. When a defendant in execution owns real estate, subject to execution, jointly or in common with any other person, the judgment shall be a lien, and the execution be levied upon the interest of the defendant only. When he owns personal property, jointly, or in co-partnership with any other person, and the interest cannot be separately attached, the sheriff shall take possession of the property, unless the other person having an interest therein, shall give the sheriff a sufficient bond, with surety, to hold and manage the property according to law; and the sheriff shall then proceed to sell the interest of the defendant in such property, describing such interest in his advertisement, as nearly as may be, and the purchaser shall acquire all the interest of such defendant therein; but nothing contained shall be so construed as to deprive the co-partner of any such defendant, or any person interested in such property, subjecting the same to the payment of the debts of the co-partnership.

Sec. 500. Any party having a judgment upon any justice's docket, upon which an execution has been returned unsatisfied, and no property found, may take a transcript of such judgment and return to the clerk of the district court of the county, and upon making an affidavit that the defendant has real estate in said county, subject to execution, the clerk shall enter the judgment in the execution docket, in the same manner as judgments of the district court, and thereafter it shall stand, and execution be issued thereon, as upon the judgment of the district court.

LIV. CONSTRUCTION.

Sec. 501. Term indicating an officer, how construed.
502. Construction of words importing singular number or masculine gender.
503. Actions already commenced to conform to provisions of this act, as far as practicable.
504. Act to be liberally construed.
505. No part of act to be retroactive, unless so declared.
506. Repealing clause.

Sec. 501. Whenever any term indicating an officer, is used, it shall be construed, when required, to mean any person authorized by law to discharge the duties of such officer.

Sec. 502. Words importing the singular number only, may also be applied to the plural of persons and things, and words importing the masculine gender only, may be extended to females also.

Sec. 603. In actions already commenced, the pleadings to be had to form issues, the manner of proving testimony, the examination of parties, the trial and rendition of judgment, and all other proceedings, shall conform to the provisions of this act, as far as practicable.

Sec. 504. The provisions of this act shall be liberally construed, and shall not be limited by any rule of strict construction.

Sec. 505. No part of this act shall be retroactive, unless expressly so declared.

Sec. 506. All laws inconsistent with the provisions of this act are hereby repealed, but the repeal shall not operate to revive any former act. All rights of action, secured by existing laws, may be prosecuted in the manner provided in this act.

Passed April 28, 1854.

AN ACT RELATING TO JUSTICES OF THE PEACE AND CONSTABLES, AND THE PRACTICE BEFORE JUSTICES OF THE PEACE.

I. *Of justices.*
II. *Of constables.*
III. *Jurisdiction of justices of the peace.*
IV. *Commencement of action; service and return of process.*
V. *Pleadings and adjournments.*
VI. *Of witnesses and depositions.*
VII. *Title to land.*
VIII. *Trial by jury.*
IX. *Of judgment.*
X. *Stay of execution and filing of transcripts.*
XI. *Setting off judgments.*
XII. *Of execution and proceedings thereon.*
XIII. *Of replevin.*
XIV. *Forcible entry and detainer.*
XV. *Action to recover possession of a mining claim.*
XVI. *Of proceedings for contempt before justices of the peace.*
XVII. *Certiorari and proceedings thereon.*
XVIII. *Of appeals to the district court.*
XIX. *Form in civil actions in justices court.*
XX. *Criminal jurisdiction.*
XXI. *Forms of proceedings in criminal cases.*

I. OF JUSTICES.

SEC. 1. Justices, when and where elected.
2. Each precinct entitled to one.
County commissioners may appoint.
3. Qualifications for office of justice.
4. Election of justice, how conducted.
5. Justice to give bond; form of.
6. Bond to be filed; action upon.
7. Term of office.
8. Vacancies how filled.
9. Jurisdiction of justices.
10. Provision in case of a division of a precinct.
11. In case of death, resignation &c., of justice, all his books, papers, &c., to be delivered to the nearest justice in the precinct.
Proviso, in case there is no other justice.
12. Penalty for neglect to deliver books, &c.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the qualified voters of each election precinct, in the several organized counties of this territory, shall at the time and place of holding the annual election, elect one or more justices of the peace.

SEC. 2. Each precinct shall be entitled to one justice of the peace, but the board of county commissioners, at the time of organizing such precinct, or at any time afterwards, may, if they deem proper, authorize an additional justice of the peace to be elected therein.

SEC. 3. No person shall be eligible to the office of justice of the peace, who is not a qualified voter, and who has not been a resident of the county in which he is elected, six months next preceding his election; nor shall any sheriff, coroner, or clerk of the district court, be eligible to, or hold such office.

SEC. 4. The election of justice of the peace shall be conducted, and return of such election made in the same manner, as other elections; and every person duly elected, shall be entitled to a certificate of election, and shall take an oath of office; which oath shall be endorsed on the back of the certificate of election, and together with the certificate, filed in the office of the clerk of the district court for the proper county.

SEC. 5. Every person elected a justice of the peace, shall at the time of filing his oath of office in the office of the county auditor, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said auditor, in the sum of five hundred dollars, conditioned that he will faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace: said bond may be in the following form:

Know all men by these presents, that we, J. P., A. B., and C. D. are held and firmly bound, unto the board of commissioners of the county of ——— in the territory of Washington, in the sum of five hundred dollars, for the payment of which, we jointly and severally bind ourselves, our heirs, executors, and administrators.

Sealed with our seals. Dated this ——— day of ——— A. D. 18 .

Whereas, the said J. P. has been duly elected a justice of the peace, in and for the precinct of ——— in the county of ——— A. D. 18 . Now the condition of the above obligation is such, that, if the said J. P. shall faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace, then this obligation shall be void, otherwise, in full force.

J. P., [L. S.]
A. B., [L. S.]
C. D., [L. S.]

SEC. 6. Such bond shall be filed in the office of the county auditor; and every person aggrieved by a breach of the condition thereof, may, by an action upon the bond, have judgment against the justice, and his sureties, for such sum as he may show himself entitled to, with costs, and interest at the rate of twenty-five per cent. per annum ; and upon any such judgment, stay of execution shall not be allowed.

SEC. 7. Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified ; and every justice heretofore elected and qualified, shall continue to act as such until his term of office expires, and until his successor is elected and qualified.

SEC. 8. All vacancies existing in the office of justice of the peace, whether happening by death, resignation, or otherwise, may be filled by appointment by the board of commissioners of the proper county. Every person so appointed shall hold his office until the next election ; and is required to qualify in the same manner, as if he had been duly elected to the office of justice of the peace, under the provisions of this act.

SEC. 9. The jurisdiction of justices of the peace, elected in pursuance of the provisions of this act, shall be co-extensive with the limits of the county in which they are elected, or appointed; and no other or greater, whether said county be attached to any other county for judicial purposes, or not. But every justice of the peace shall continue to reside in the precinct for which he was elected, or appointed, during his continuance in office.

SEC. 10. When a precinct shall be divided, and any justice of the peace of the original precinct shall fall into the new one, he shall continue to discharge the duties of justice of the peace, until his term of office expires, and his successor is elected and qualified.

SEC. 11. If any justice of the peace shall die, resign, or remove out of the precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records, and papers, appertaining to his office, or relating to any suit, matter or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, who may thereupon proceed to hear, try, and determine such matter, suit, or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such matter or suit was commenced, to have done : *Provided*, That if there be no other justice of the peace in said precinct, such docket, books, records and papers, shall be delivered to the county auditor, who on demand shall deliver the same to a justice of said precinct, when there shall be one qualified therein, who shall exercise the same powers as though they had been originally delivered to him.

SEC. 12. Every person whose duty it is to deliver over the docket, books, records and papers, as prescribed in the last section, shall forfeit and pay for the use of the county, fifteen dollars for every three months neglect to perform such duty, which sum may be recovered at the suit of any person.

II. OF CONSTABLES.

Sec. 13. Constables, when and where elected.
14. Vacancies how filled.
15. Election of, how conducted.
16. Constable to take an oath.
17. Shall give bond.
18. Jurisdiction of.

Sec. 13. At each general election, there shall be elected by the qualified electors of each precinct in the several organized counties of this territory, as many constables as there are justices of the peace elected, or authorized to be elected, in such precinct.

Sec. 14. All vacancies existing in the offices of constable, whether happening by death, resignation or failure to elect, or otherwise, may be filled by appointment by the board of commissioners of the proper county; and every person so appointed shall hold his office until the next election.

Sec. 15. The election of constables shall be conducted, and the return of such election made, and certificates of election issued in the same [manner] as in elections of justices of the peace.

Sec. 16. Every person elected or appointed a constable, shall within twenty days after receiving his certificate of election, take an oath before any person authorized to administer oaths, that he will support the constitution of the United States, and the laws of this territory, and faithfully discharge and perform the duties of his office as constable, according to the best of his ability. Such oath shall be endorsed on the back of the certificate of election, or appointment, and filed, together with the certificate, in the office of the auditor of the proper county.

Sec. 17. Every person elected or appointed to the office of constable, shall within the time prescribed for filing his oath of office, enter into a bond to the proper county, with two or more sureties, residents of the county, to be approved by the county auditor, in the sum of one thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office; and in every respect discharge all the duties of constable according to law. The auditor shall endorse thereon his approval of the sureties therein named, and shall file the same in his office.

Sec. 18. Any constable may within his county serve any writ, process, or order, lawfully directed to him by any justice of the peace, judge of probate, or coroner, and generally do and perform all acts, by law required of constables.

III. JURISDICTION OF JUSTICES OF THE PEACE.

SEC. 19. Jurisdiction to extend to county for which elected.
20. Office to be in the precinct for which elected.
21. Not to hold his office with an attorney, unless &c.
22. Authority of justice, and powers of justices court.
23. Justice to have jurisdiction and cognizance of certain actions &c.
24. Jurisdiction conferred by last section not to extend to certain actions.

SEC. 19. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater, unless otherwise expressly provided by statute.

SEC. 20. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere, but he may issue process in any place in the county.

SEC. 21. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice of the peace.

SEC. 22. Every justice of the peace, elected in any precinct in this territory, is hereby authorized to hold a court for the trial of all actions in the next section enumerated, and to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this territory; and all laws of a general nature shall apply to such justices court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter.

SEC. 23. Every justice of the peace shall have jurisdiction over, and cognizance of, the following actions and proceedings:

1st. Of an action arising on contract for the recovery of money only, if the sum claimed do not exceed one hundred dollars.

2d. Of an action for damages, for an injury to the person or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars.

3d. Of action for a penalty, not exceeding one hundred dollars.

4th. Of an action upon a bond, conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment, as it shall become due.

5th. Of an action on an undertaking or surety bond, taken by him, if the amount claimed do not exceed one hundred dollars.

6th. Of an action for the foreclosure of any mortgage, or the enforcement of any lien on personal property, when the debt secured does not exceed one hundred dollars.

7th. Of an action for damages, for fraud in the sale, purchase, or exchange of personal property, if the damages claimed do not exceed one hundred dollars.

8th. Of an action for a forcible or unlawful detention of lands, tenements, or other possessions.

9th. Of an action to try the right of occupancy or possession to a mining claim.

10. To take and enter judgment on the confession of a defendant, when the amount does not exceed one hundred dollars.

SEC. 24. The jurisdiction conferred by the last section, shall not however extend to the civil actions,

1st. In which the title to real property shall come in question.

2d. Nor to an action for the foreclosure of a mortgage, or the enforcement of a lien on real estate.

3d. Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction.

4th. Nor to any action against an executor or administrator, as such.

IV. COMMENCEMENT OF ACTIONS—SERVICE AND RETURN OF PROCESS.

SEC. 25. Justice to keep a docket; what to be entered therein.
26. How actions may be instituted before justice.
27. Plaintiff a non-resident, may be required to give security for costs.
28. Process, how issued and directed.
29. First process to be a summons.
30. Summons, how served.
31. Constable or sheriff to make return thereon.
32. Warrant of arrest, when it may be issued.
33. Before issuing warrant, plaintiff to give bond.
34. Warrant, how served.
35. Officer making the arrest to give notice to the plaintiff.
36. How long defendant in want may be detained.
37. On what conditions defendant may waive a continuance.
38. When justice may appoint a special officer to execute a process.
39. Penalty for failing or neglecting to execute process.
40. How infant plaintiff may sue.
41. Parties entitled to one hour to make their appearance.

SEC. 25. Every justice of the peace shall keep a docket, in a well bound book, in which he shall enter:—

1st. The titles of all actions commenced before him.

2d. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand.

3d. The date of the summons, and the time of its return; and if an order to arrest the defendant be made, the statement of the facts on which the order issued.

4th. The time when the parties, or either of them, appear, or their non-appearance, if default be made.

5th. A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any set-off be pleaded, a similar statement of the set-off, and the amount estimated.

6th. Every continuance, stating at whose request, and for what time.

7th. The demand of a trial by jury, when the same is made, and by whom made; the order for the jury, and the time appointed for the trial, and return of the jury.

8th. The names of the jury who appear and are sworn; the names of all witnesses sworn, and at whose request.

9th. The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge.

10th. The judgment of the court, and the time when rendered.

11th. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt and costs, and the fees due to each person separately.

12th. The fact of an appeal having been made and allowed, and the time when.

13th. Satisfaction of the judgment, or any money paid thereon, and the time when.

14th. And such other entries as may be material.

Sec. 26. Actions may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process.

Sec. 27. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs before the commencement of the action.

Sec. 28. All process issued by justices of the peace, shall run in the name of the United States, be dated the day issued, and shall be signed by the justice granting the same, and shall be directed to the sheriff or any constable of the proper county.

Sec. 29. In all cases, not otherwise specially provided for, the first process shall be a summons, directed to the sheriff or constable, and commanding him to summon the defendant to appear before such justice, at a time and place to be named in the summons, not less than six nor more than twenty days after the date thereof, to answer the complaint of the plaintiff.

Sec. 30. The summons shall be served at least five days before the time of appearance therein mentioned, by delivering a copy thereof, as provided for the service of process in the act regulating civil actions.

SEC. 31. Every constable or sheriff serving any process, shall return thereon, in writing, the time and manner of service, and shall sign his name to such return.

SEC. 32. A justice of the peace shall issue a warrant of arrest in such cases within his jurisdiction, and for such causes, and upon such proof, as is provided for an order for a warrant in the act regulating civil actions.

SEC. 33. Before issuing the warrant of arrest, the justice shall require a bond on part of the plaintiff, with one or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which may be sustained by reason of the arrest, not exceeding the sum specified in the bond, which shall be at least one hundred dollars.

SEC. 34. The warrant will be served by arresting the defendant, and taking him before the justice of the peace who issued the same; but if such justice, at the return thereof be absent, or unable to try the action, the officer shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself.

SEC. 35. The officer making the arrest, shall immediately give notice thereof to the plaintiff, his agent, or attorney, and endorse on the warrant the time of the arrest, and the time of serving notice on the plaintiff.

SEC. 36. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer, until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the action shall be commenced, or unless it has been delayed at the instance of the defendant.

SEC. 37. If the defendant, on his appearance, demand a continuance, the same may be granted, on condition that he remain in custody, execute and file with the justice, a bond with one or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court; or that the sureties will pay to the plaintiff the amount of any judgment, which he may recover in the action. On filing such bond, the justice shall order the defendant to be discharged from custody.

SEC. 38. Every justice, issuing any process authorized by this chapter, upon being satisfied that such process will not be executed for want of an officer, to be had in time to execute the same, may, by an indorsement upon the process, empower any suitable person, not being a party to the action, to execute the same; and the person so empowered, shall thereupon possess all the authority of a constable, in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

SEC. 39. If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer, for every such offense, shall pay to the party injured, ten dollars, and all damage such party may have sustained, by reason thereof, to be recovered in a civil action founded upon this statute.

SEC. 40. No action shall be commenced by an infant plaintiff, except by his guardian, or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, and who shall be responsible for the costs therein.

SEC. 41. After the service and return process against an infant defendant, the action shall not be further prosecuted, until a guardian for such infant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action.

SEC. 42. The parties shall be entitled to one hour in which to make their appearance, after the time mentioned in the summons for appearance, but shall not be required to remain longer than that time, unless both parties appear; and the justice, being present, is actually engaged in the trial of another action or proceeding; in such case, he may postpone the time of appearance, until the close of such trial.

V. PLEADINGS AND ADJOURNMENTS.

SEC. 43. Pleadings to take place on appearance of parties, unless. &c.
44. What the pleadings shall be.
45. When the pleadings shall be in writing.
46. When the pleadings are real, substance to be entered on the docket; when in writing to be filed. No particular form required.
47. Statement of want of sufficient knowledge, equivalent to denial.
48. In cause of action accruing out of an account or instrument for the payment of money, sufficient to deliver the account or instrument to the court; adverse party entitled to inspection of the original.
49. Pleadings to be verified by oath of the party.
50. All material allegations not denied to be taken to be true; exceptions.
51. Either party may object to the pleading of the other.
52. Variance between proof and allegation to be disregarded, unless adverse party has been misled.
53. Amendments to the pleadings.

SEC. 54. Set off to be alleged in the answer; defendant may have judgment for the amount due.

55. When amount due defendant exceeds jurisdiction of justice, court to allow sufficient to cancel plaintiff's claim, and defendant to have judgment for costs.

56. Continuance, when and for how long justice may grant.

SEC. 43. The pleadings in justices' court shall take place upon the appearance of the parties, unless they shall have [been] previously filed, or unless the justice shall, for good cause shown, allow a longer time than the time of appearance.

SEC. 44. The pleadings in justices' court shall be:

1st. The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action.

2d. The answer of the defendant, which may contain a denial of the complaint, or any part thereof; and also a statement, in a plain and direct manner, of any facts constituting a defense.

3d. When the answer sets up a set-off by way of defense, the reply of the plaintiff.

SEC. 45. The pleadings shall be in writing, when the action is for one of the following causes:

1st. For the foreclosure of any mortgage, or the enforcement of any lien on personal property.

2d. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions.

3d. To recover the occupancy or possession of a mining claim. In all other cases, the pleadings may be oral or in writing.

SEC. 46. When the pleadings are oral, the substance of them shall be entered by the justice in his docket. When in writing, they shall be filed in his office, and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

SEC. 47. A statement in an answer or reply, that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party to form a belief, shall be deemed equivalent to a denial.

SEC. 48. When the cause of action, or set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set-off. The court may, at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if it be not so exhibited, may prohibit its being given in evidence.

SEC. 49. Every complaint, answer, or reply, shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified.

SEC. 50. Every material allegation in a complaint, or relating to a set-off in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case.

SEC. 51. Either party may object to a pleading by his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded.

SEC. 52. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

SEC. 53. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omission in the allegations or denials, necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party, in consequence of such amendment, a continuance shall be granted. The court may, also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.

SEC. 54. To entitle a defendant to any set-off he may have against the plaintiff, he must allege the same in his answer; and the statute regulating set-offs in the district court, shall in all respects, be applicable to a set-off in a justice's court, if the amount claimed to be set-off after deducting the amount found due the plaintiff, be within the jurisdiction of a justice of the peace; and judgment may, in like manner, be rendered by the justice in favor of the defendant, for the balance found due from the plaintiff.

SEC. 55. When the set-off of the defendant proved shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case, the court shall not render judgment for any further sum in favor of the defendant.

SEC. 56. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if the defendant be not under arrest, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects, shall be governed by the law as applicable to continuance in the district court.

VI. OF WITNESSES AND DEPOSITIONS.

SEC. 57. Subpœna valid to compel attendance of witnesses, if within twenty miles.
58. How subpœna may be served.
59. Witness failing to appear, justice may issue an attachment.
60. Attachment, to whom directed.
61. Person subpœnaed neglecting to appear liable for damages.
62. Party to action may be examined as a witness.
63. Testimony of party may be rebutted.
64. Party refusing to testify, judgment may be taken against him.
65. Party examined by adverse party, may be examined in his own behalf.
66. When depositions may be taken.
67. Notice of, how served.
68. When depositions may be read on trial.

SEC. 57. A subpœna issued by a justice of the peace, shall be valid to compel the attendance of a witness in a justice's court, if such witness be within twenty miles of the place of trial.

SEC. 58. A subpœna may be served by any white person above the age of eighteen years, by reading it to the witness, or by delivering to him a copy thereof, if he require it, or by leaving a copy at his usual place of abode.

SEC. 59. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpœnaed to appear before him in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpœna, and the party in whose behalf such subpœna was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *Provided*, That no attachment shall issue against a witness in any civil action, unless his fees for mileage, and one day's attendance, have been tendered or paid in advance, if previously demanded by such witness, from the person serving the subpœna.

SEC. 60. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case, the party requiring such attachment, shall pay all such costs.

Sec. 61. Every person subpœnaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnaed, for all damages which such party may have sustained by reason of his non-appearance: *Provided*, That such witness had the fees allowed for mileage, and one day's attendance paid, or tendered him, in advance.

Sec. 62. A party to an action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken.

Sec. 63. The examination of a party, thus taken, may be rebutted by adverse testimony.

Sec. 64. If a party refuse to attend and testify at the trial, or give his deposition before trial, when required, his complaint, answer, or reply, may be stricken out, and judgment taken against him.

Sec. 65. A party examined by an adverse party, may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received.

Sec. 66. Either party, in an action depending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go, more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial.

Sec. 67. The notice shall be served, and the deposition taken, certified, and returned, according to the law regulating the taking of depositions, to be read in the district court.

Sec. 68. The justice shall allow every deposition taken, certified, and returned, according to law, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness, whose deposition is so offered,

1st. Is dead, or resides more than twenty miles from the place of trial; or,

2d. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity;

3d. That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party offering the deposition.

VII. TITLE TO LAND.

SEC. 69. Title to land appearing to be in dispute, in the trial of any cause, justice to cease proceedings, and certify the cause to the district court, in the same manner as on an appeal.

SEC. 69. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the district court of the county, a transcript of all the entries made in his docket, relating to the cause, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the district court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein; and the costs shall abide the event of the suit.

VIII. TRIAL BY JURY.

SEC. 70. Either party may demand a jury.
71. How many the jury shall consist of.
72. Justice shall issue a venire.
73. Sheriff or constable to execute the venire.
74. Either party may challenge the jury.
75. Challenges for cause.
76. Justice to administer oath to juror.
77. Verdict to be delivered to justice, and entered on docket.
78. Jury unable to ageee, justice may discharge them, and issue a new venire, unless, &c.
79. Penalty for not appearing when summoned as juror.

SEC. 70. Before the justice shall commence an investigation of the merits of the cause, by an examination of the witnesses, or the hearing of any other testimony, either of the parties may demand of the justice that the cause be tried by a jury.

SEC. 71. The jury shall consist of six persons, unless the parties agree upon any number of jurors less than six, to try the cause; in which case, the jury shall consist of such number, not exceeding six, as the parties may agree upon.

SEC. 72. The justice shall issue a venire, directed to the sheriff, or any constable of the county where the cause is to be tried, commanding him to summon six (or such number as the parties may have agreed upon,) good and lawful men of the county, qualified to serve as jurors in the district court of the same county, who shall be no wise of kin to either party, nor interested in the action, to appear before said justice, at a time and place to be named therein, to make a jury for the trial of the cause between the parties therein named.

SEC. 73. The sheriff or constable shall execute such venire fairly and impartially, and shall not summon any person whom he has reason to believe is biased or prejudiced for or against either of the parties. He shall summon the jurors personally, and shall make a list of the persons, which he shall certify and annex to the venire, and return to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the sheriff or constable shall immediately summon others to serve in their place.

SEC. 74. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenges shall be to individual jurors, and shall be peremptory, or for cause. Each party shall be entitled to two peremptory challenges.

SEC. 75. Challenges for cause may be taken on any ground that would be a good cause of challenge, on the trial of an action in the district court. Challenges for cause shall be tried by the justice.

SEC. 76. When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause.

SEC. 77. When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket.

SEC. 78. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time, cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment, on the evidence before him, or upon such other evidence as they may produce.

SEC. 79. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine, not exceeding ten dollars.

XI. OF JUDGMENT.

SEC. 80. When judgment dismissing the action, without prejudice, may be entered.
81. When judgment shall be given upon failure of defendant to appear.
82. If a jury be not demanded, justice to hear and determine the cause.
83. When judgment shall be entered.
84. Effect of defendant's offering, before trial, to allow judgment for a specified sum to be taken against him.
85. Costs, disposition of.

SEC. 80. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

1st. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2d. When he fails to appear at the time specified in the summons, upon continuance, or within one hour thereafter.

3d. When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial it shall be deemed waived, and shall not be cause of reversal.

SEC. 81. When the defendant fails to appear and answer at the time specified in the summons, or within one hour thereafter, judgment shall be given as follows:

1st. When the defendant has been served with a copy of the complaint, judgment shall be given without further evidence for the sum specified in the summons.

2d. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceeding the amount specified in the summons.

SEC. 82. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly.

SEC. 83. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases, it shall be entered within three days after the close of the trial.

SEC. 84. If the defendant, at any time before the trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer, before trial, and fail to recover in the action a sum greater than the offer, such plaintiff shall not recover any costs that may accrue, after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it, shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided.

SEC. 85. When the prevailing party is entitled to costs, by this act, the justice shall add their amount to the judgment; or, in case of the failure of the plaintiff to recover, or in case of a dismissal of the action, he shall enter up judgment in favor of the defendant for the amount of such costs.

X. STAY OF EXECUTION AND FILING OF TRANSCRIPTS.

SEC. 86. Execution, how long it may be stayed.
87. In what manner it may be stayed. Bond to be given.

88. Form of bond.
89. At the expiration of the stay, how execution to be satisfied.
90. Bail may have judgment against defendant, when.
91. If a judgment be stayed, justice to revoke execution, in same manner as on an appeal.

SEC. 86. The execution upon a judgment by a justice of the peace, may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party, and for the following periods of time, to be calculated from the date of the judgments:

1st. If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month.

2d. If it be for more than twenty-five dollars, two months.

SEC. 87. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after the rendering of the judgment, enter into a bond before the justice, to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment, at the expiration of the stay.

SEC. 88. Such bond shall be signed by the person entering into the same, and may be in the following form:

Whereas, A. B. has obtained a judgment before J. P., one of the justices of the peace in and for ——— county, on the — day of ———, 18—, against C. D., for —— dollars. Now, therefore, I, E. F., acknowledge myself bound to A. B., in the sum of —— dollars; this bond to be void, if such judgment shall be paid at the expiration of —— month after the time it was rendered.

Dated the — day of ——— 18—.

E. F.

SEC. 89. If at the expiration of such stay the judgment be not paid, the execution shall issue against both the principal and bail. If the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money, collected by him on the execution, was collected from the bail, and the time when the same was received.

SEC. 90. After the return of such execution, the bail shall be entitled, on application to the justice, to have the judgment, or so much thereof as may have been collected from him in satisfaction of the execution, transferred to his use; and he may collect the same from the defendant by execution, together with interest at the rate of twelve per cent. per annum.

SEC. 91. If a judgment be stayed, in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with like effect, as he is hereinafter directed to revoke an execution, after an appeal has been allowed; and if the defendant have been committed, shall order him to be discharged from custody.

XI. SETTING OFF JUDGMENTS.

Sec. 92. When mutual judgments may be set-off against each other.
93. Method of proceeding where the judgment proposed as a set-off was rendered before another justice.
94. Action of justice where judments are set-off against each other.

Sec. 92. If there be mutual justice's judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, one may be set-off against the other, by the justice before whom the judgment, against which the set-off is proposed, may be.

Sec. 93. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off, shall produce before the justice a transcript of such judgment, upon which there is a certificate of the justice before whom such may be, that it is unsatisfied, in whole or in part; and that there is no appeal; and that such transcript was obtained for the purpose of being set-off against the judgment to which it is offered as a set-off. The justice granting such transcript, shall make an entry thereof, on his docket, and all further proceedings on such judgment shall be stayed, unless such transcript be returned with the proper justice's certificate thereon, that it has not been allowed in set-off.

Sec. 94. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice, to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

XII. OF EXECUTIONS AND PROCEEDINGS THEREON.

Sec. 95. Execution issued on the application of the party, entitled to the same; exception.
96. Judgment rendered by a justice not satisfied during his continuance in office, his successor to issue execution.
97. Execution unsatisfied in one county, transcript to be sent to justice of another county, who shall issue execution.
98. Execution, to whom directed, when dated and when returnable.
To be against goods and chattels.

SEC. 99. Before delivery of execution, certain entries to be made in docket and on execution.
100. Proceeding in case execution is not satisfied.
101. Action of officer in case of levy upon goods and chattels.
102. Goods and chattels to be sold at public sale to highest bidder.
103. Officer not to be a purchaser at such sale.
104. When execution may be issued against the person of the defendant.
105. When certain persons may be summoned as garnishees.
106. Justice may issue execution against prevailing party for fees and costs; when.
107. Method of proceeding upon adverse claim to property levied on.
108. Construction of the last two sections.

SEC. 95. Execution for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, in the manner hereinafter prescribed; but after the lapse of five years from the date of the judgment, no execution shall issue except by leave of the justice before whom such judgment may be, upon reasonable notice to the defendant.

SEC. 96. When any judgment shall have been rendered by any justice of the peace, and the same shall not be satisfied, during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered, shall issue execution upon such unsatisfied judgment in the same manner, and with like effect, as if he himself had rendered the judgment.

SEC. 97. If the defendant have not goods and chattels in the county in which judgment was rendered, sufficient to satisfy the execution, the justice before whom such judgment may be, shall, at the request of the party entitled, make out a certificate transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon, for the amount of the judgment, or such part as shall be unsatisfied, with costs as in other cases.

SEC. 98. The execution shall be directed (except when it is otherwise specially provided,) to the sheriff or any constable of the county where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and it shall be against the goods and chattels of the person against whom the same is issued.

SEC. 99. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall endorse thereon, the time of the reception of the same.

SEC. 100. If an execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice who issues the same, or the justice to whom his docket is transferred, by an endorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied, the endorsement of renewal shall express the sum due on the execution. Every such endorsement shall renew the execution in full force in all respects for thirty days, and no longer ; and an entry of such renewal shall be made in the docket of the justice.

Sec. 101. The officer, after taking goods and chattels into his custody, by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the county, of the time and place, when and where they will be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Sec. 102. At the time and place so appointed, if the goods and chattels be present for inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder, he shall return the execution and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

Sec. 103. No officer shall directly, or indirectly, purchase any goods or chattels at any sale made by him upon execution, and every such purchase shall be absolutely void.

Sec. 104. If the action be one in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant may be issued after the return of an execution against his property unsatisfied in whole or in part. An execution against the person may likewise be issued after such return, where the defendant has been arrested upon a warrant and not discharged according to law.

Sec. 105. If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such execution, the officer shall on demand of the plaintiff, summon in writing as garnishees, such persons as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees, and the like proceeding shall he had thereon, before the justice to final judgment, as in proceedings by attachment.

Sec. 106. Any justice of the peace may issue an execution against the prevailing party to collect fees and costs for which such party may be liable, after an execution has been first issued against the other party, and returned "no property found."

Sec. 107. If any property levied on, be claimed by any person other than the defendant in the execution, the sheriff or constable shall summon from his county, six persons, qualified as jurors between the parties to try the validity of the claim; such officer shall also give reasonable notice of the claim, and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses of the parties shall be sworn by the officer, and if their verdict be in favor of the claimant, the officer may relinquish the levy unless the plaintiff give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff or constable and the witnesses shall be the same as for similar services in a justice's court, and shall be paid by the claimant if the verdict be against him, otherwise by the plaintiff. On the trial, the defendant and the claimant may be examined as witnesses by the plaintiff.

SEC. 108. Nothing contained in the last two sections shall be so construed, as to prevent the claimant of property levied on by execution from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed.

XIII. OF REPLEVIN.

SEC. 109. Plaintiff may claim delivery of property.
110. Affidavit to be made, and what it shall show.
111. Justice to order the delivery.
Order to be endorsed on the affidavit.
Bond to be given.
112. On receipt of order, affidavit and bond, sheriff to take the property.
Copies to be served on the defendant.
113. Defendant may except to the sureties.
114. Defendant may require the return of the property upon giving a proper bond.
115. Defendant's sureties to justify.
Officer responsible until their justification, &c.
116. Action of the officer in case the property is concealed.
117. Disposition of the property.
118. Method of proceeding in case of adverse claim to the property.
119. Officer to make return of affidavit &c., to the justice; when.

SEC. 109. The plaintiff in an action to recover the possession of personal property may at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property as provided in this act.

SEC. 110. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing

1st. That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entititled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth;

2d. That the property is wrongfully detained by the defendant;

3d. The alleged cause of the detention thereof, according to his best knowledge, information and belief;

4th. That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure, and

5th. The actual value of the property.

SEC. 111. The justice shall thereupon, by an endorsement in writing upon the affidavit, order the sheriff or any constable of the county, to take the same from the defendant and deliver it to the plaintiff upon receiving a proper bond.

SEC. 112. Upon the receipt of the affidavit and order with a bond, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect, that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property of the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also without delay, serve on the defendant a copy of the affidavit, order and bond, by delivering the same to him personally, if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual abode of either within the county, with some person of suitable age and discretion ; or if neither have any known place of abode in the county, putting them into the post office, directed to the defendant at the post office nearest to him.

SEC. 113. The defendant may within two days after the service of a copy of the affidavit, order and bond, give notice to the officer that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice ; and the officer shall be resposible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they justify, or new sureties be substituted, and they justify. If the defendant except to the sureties, he cannot re-claim the property as provided in the next section.

SEC. 114. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the officer a bond, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required, within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this act.

SEC. 115. The defendant's sureties, upon one day's notice to the plaintiff, or his attorney, shall justify before the justice, and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is complete, or expressly waived, and may retain the property until that time, but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff.

SEC. 116. If the property, or any part therof, be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession.

SEC. 117. When the officer shall have taken property as in this act provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 118. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by a bond executed by two sufficient sureties accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent, shall be valid against the officer unless made as aforesaid, and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

SEC. 119. The officer shall return the order and affidavit with his proceedings thereon, to the justice within five days after taking the property mentioned therein.

XIV. FORCIBLE ENTRY AND DETAINER.

SEC. 120. Entry into lands, &c., how to be made.
121. Person entitled to the premises to be restored to the possession.
122. Complaint in writing to be made to a justice of the peace.
123. Justice to issue summons.
124. How summons shall be served.
125. Jury to be summoned.

SEC. 126. Sufficient jurors not attending, justice may order others to be summoned.
127. Plaintiff failing to attend, to be non-suited.
128. Defendant failing to appear, case may be tried ex parte, or continued.
129. If defendant appear, his answer to be in writing, setting forth his defense.
130. Mode of trial, and proof required on the part of the plaintiff.
131. Proceedings on finding the defendant guilty.
132. Verdict to be in writing; form of.
133. Proceedings in case of verdict of "not guilty."
134. New trial may be granted; when.
135. Title, in no issue, to be enquired into.
136. One year's quiet possession may be pleaded in bar; when.
137. Person entitled to any premises, may recover possession in certain specified cases.
138. Upon complaint for any of the causes mentioned in the last section, jury not necessary, unless demanded.
139. In action for recovery of premises, demised or let, for neglect or refusal to pay rent, defendant may, before judgment, pay the amount due, with interest and costs.
140. Justice to have power to continue, as in other cases.
141. Nothing in this act to bar or prevent the party injured from bringing his action to recover possession of the premises, or damages for trespass, or injury committed.

SEC. 120. No person shall make entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases, he shall not enter with force, but only in a peaceable manner.

SEC. 121. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, the person entitled to the premises may be restored to the possession thereof, in the manner hereinafter provided.

SEC. 122. The person entitled to the possession of the premises may make complaint in writing, on oath, to a justice of the peace of the county in which the premises are situated, setting forth that the person complained of is in possession of the lands or tenements in question—describing them; and that he entered into the same with force, or that he unlawfully holds the same by force, as the case may be, and the time when.

SEC. 123. Upon receiving such a complaint, the justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the justice, on a day in such summons named.

SEC. 124. The summons shall be served by the officer as in other cases, and at the same time; a copy of the complaint shall, in like manner, be served on the defendant. The officer shall, in his return, state the time and manner of such service.

SEC. 125. The justice shall, at the time of issuing the summons, issue a venire to the sheriff or constable, commanding him to summon six good and lawful men, qualified to serve as jurors, to appear at the time and place appointed for the trial of the complaint, to be a jury in the case. Such venire shall be returned on or before the day appointed for the trial; and the officer shall endorse thereon the list of the jurors summoned.

Sec. 126. If a sufficient number of jurors do not attend, or attending, are set aside by challenging peremptorily, or for cause, the justice may order the sheriff or constable to complete the number, by summoning other jurors.

Sec. 127. If the plaintiff fail to attend at the time appointed for hearing the complaint, in person, by agent, or attorney, and prosecute his action, he shall be non-suited, and the defendant shall recover his costs.

Sec. 128. If the defendant fail to appear at the time appointed for hearing the complaint, the justice may proceed ex parte, or continue the cause, at his discretion; but he shall not continue it for a longer time than ten days, nor to any other place than that named in the summons, for the hearing of the cause.

Sec. 129. If the defendant appear, he shall, before the trial, file his answer in writing, and under oath, in which he shall set forth his defense.

Sec. 130. The jury shall consist of six persons, unless the parties agree on a less number; and when duly empaneled and sworn, the justice shall cause the complaint to be read to them, and then call on the plaintiff to support the same by proof; but the plaintiff shall not be required to make further proof of the forcible entry and detainer, than that he was lawfully possessed of the premises, and that the defendant unlawfully entered and detains the same.

Sec. 131. If the jury on the trial find the defendant guilty, the justice shall record the verdict, and give judgment thereon, with costs, and also issue a writ of restitution, directed to the sheriff or constable, to cause the plaintiff to be repossessed of the premises, to which shall be added a clause commanding the officer to levy the costs of the goods and chattels of the defendant.

Sec. 132. The verdict of the jury shall be in writing, and shall be in the form, or to the effect following:

"We, the jury, find the defendant guilty," or, if in favor of the defendant, "not guilty, of said forcible entry and detainer, in manner and form as the plaintiff in his complaint hath alleged;" or the jury may find the defendant guilty as to part, and not guilty as to the balance of the charge, as laid in the plaintiff's complaint; if so, they shall state it specially in their verdict.

Sec. 133. When the jury find a verdict of "not guilty," generally, for the defendant, the verdict shall be so recorded, and the justice shall enter judgment against the plaintiff for costs, and issue execution therefor against his goods and chattels.

SEC. 134. In all cases of forcible entry and detainer, the justice shall have power to grant a new trial, if the same be applied for on the day the verdict is rendered, and good cause be shown, on affidavit, therefor, which shall be within ten days after granting the same, but not more than one new trial shall be granted to either party.

SEC. 135. The title shall in no issue be enquired into, on any complaint for a forcible entry or detainer.

SEC. 136. One year's quiet possession of the premises, immediately preceding the filing of the complaint, by the party complained of, or those under whom he holds, may be pleaded by any defendant, in bar of the plaintiff's demand of possession, unless his estate therein be ended.

SEC. 137. The person entitled to any premises, may recover possession thereof in the manner hereinbefore provided, in the following cases:

1st. When any person shall hold over any lands or tenements, after the time for which they are demised or let to him, or to the person under whom he holds, or contrary to the conditions or covenants of any lease or agreement, under which he holds.

2d. When any rent shall have become due on any such lease or agreement, and the tenant, or person in possession, shall have neglected or refused, for ten days after demand of the possession, made in writing, to deliver up possession of the premises, or pay the rent so due.

3d. When any person shall continue in possession of any premises, sold by virtue of any mortgage or execution, after the sheriff's deed therefor shall have been recorded.

4th. When any tenant, at will or by sufference, shall hold over after the determination of his estate, by a notice to quit, as provided by law.

SEC. 138. When the plaintiff shall file a complaint for an unlawful detainer, for any one of the causes mentioned in the last section, it shall not be necessary for the justice to issue a venire for a jury, at the time of issuing the summons; but the justice shall, at the time of trial, proceed to hear and determine the complaint, unless either party shall call for a trial by jury, in which case the justice shall issue a venire, in the same manner, and the same proceedings shall thereupon be had as in cases of forcible entry and detainer.

SEC. 139. When the action shall be brought to recover the possession of premises demised or let, for the reason that the tenant or person in possession has refused or neglected to pay the rent due, it shall be lawful for the defendant, at any time before judgment, to pay to the justice, for the plaintiff, the rent then in arrear, with interest, and the costs of the action, and thereupon no writ of restitution shall be awarded.

SEC. 140. The justice shall have the same power to continue actions for forcible entry and detainer, as in other cases.

SEC. 141. Neither the judgment, nor anything contained in this act, shall bar or prevent the party injured from bringing an action to recover the possession of the premises, or to recover damages for the trespass or injury committed against the aggressor, or party offending.

XV. ACTION TO RECOVER POSSESSION OF A MINING CLAIM.

SEC. 142. By whom, and in what manner, complaint to be made.
143. Mode of proceeding.
144. Proof of usages, customs, &c., may be admitted.

SEC. 142. Any person claiming the right to the occupancy and possession of a mining claim, withheld by another, may make complaint in writing, and on oath, to a justice of the peace of the county in which the mining claim is situated, setting forth the facts constituting his right to such possession and occupancy, and such a description of the mining claim as can conveniently be given, and that the defendant wrongfully withholds the possession from him.

SEC. 143. Upon filing such complaint, the same proceeding shall be had before the justice as in actions for a forcible entry and detainer, and if judgment be rendered for the plaintiff, a writ of restitution may in like manner be issued, to place the plaintiff in possession of such mining claim.

SEC. 144. In an action to recover possession of a mining claim, proof shall be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such usages, customs, and regulations, when not in conflict with the laws of the United States or of this territory, shall govern the decision of the action.

XVI. OF PROCEEDINGS FOR CONTEMPT BEFORE JUSTICES OF THE PEACE.

SEC. 145. Justice may punish for contempt in certain cases.
146. Punishment for contempt.
147. Person to have an opportunity to be heard.
148. If the offender be present he may be summarily arraigned.
149. Form of warrant for contempt.
150. Proceedings in case of conviction. Form of judgment.
151. Mode of enforcing judgment.

SEC. 145. In the following cases, and no others, a justice of the peace may punish for contempt:

1st. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice, while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings which tend to interrupt such proceedings, or impair the respect due to his authority.

2d. Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice.

3d. Persons guilty of resistance or disobedience to any lawful order or process made or issued by him.

Sec. 146. Punishment for contempt may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding two days, at the discretion of the justice, unless otherwise provided by statute.

Sec. 147. No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defence; and for that purpose the justice may issue his warrant to bring the offender before him.

Sec. 148. If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon.

Sec. 149. The warrant for contempt may be in the following form:

Territory of Washington, }
County of } ss.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to apprehend A. B., and bring him before J. P., one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt alleged to have been committed on the day of A. D. 18 , before the said justice, while engaged as a justice of the peace in judicial proceeding.

Dated this day of A. D., 18 . J. P.,
Justice of the peace.

Sec. 150. Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating the particular circumstances of the offense, and the judgment rendered thereon, and may be in the following form:

Territory of Washington, }
County of } ss.

Whereas, on the day of A. D., 18 , while the undersigned, one of the justices of the peace of the said county, was engaged in the trial of an action between C. D., plaintiff, and E. F., defendant, in said county, A. B., of the said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly:) And whereas, the said A. B. was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof. And whereas, the said A. B. did not show cause against the said charge—be it therefore ordered, that the said A. B. is adjudged to be guilty, and is convicted of the contempt aforesaid, and is adjudged by the undersigned to pay a fine of dollars, (or be imprisoned, &c.,)

Dated this day of A. D., 18 . J. P.,
Justice of the peace.

Sec. 151. If any person, convicted of a contempt, be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice. If he be adjudged to pay a fine, poocess may be issued to collect the same; and when so collected, it shall forthwith be paid by the justice into the county treasury.

XVII. CERTIORARI AND PROCEEDINGS THEREON.

Sec. 152. Any person conceiving himself injured by any error in any process, proceeding, &c., may remove the same to the district court.
153. When and in what manner a certiorari can be obtained.
154. How served.
155. Justice to make a special return of all the facts and proceedings.
156. Justice may be compelled to make or amend such return.
157. When the case may be brought to argument.
158. Judgment of the district court.
159. Proceedings in case of a reversal of a judgment which had been collected.

Sec. 152. If any person shall conceive himself injured by error in any process, proceeding or judgment, or order given by any justice of the peace within this territory, it shall be lawful for such person to remove such process, proceeding, judgment or order, to the district court, as hereinafter provided.

Sec. 153. Within twenty days after the rendition of the judgment, or if the error be committed after judgment, then within twenty days after such error was committed, the party applying for such certiorari, his agent, or attorney, shall file in the office of the clerk of the district court for the proper county, an affidavit, stating that in his belief there is reasonable cause for granting such certiorari, for error in such judgment or proceeding, (setting forth the ground of error alleged,) and that the application is made in good faith, and not for the purpose of delay, and further shall execute a bond to the adverse party, with one or more sureties, to be approved by the clerk in double the amount of the judgment and costs rendered before the justice, to the effect that the party applying will prosecute the writ of certiorari to final judgment, and abide any order the court may make therein.

Sec. 154. The writ of certiorari shall be served on the justice within ten days after it has been issued; and if a bond be executed in pursuance of the last section, and a certificate of the clerk to that effect be served on the justice, all further proceedings in law in such case shall cease; and if the execution shall have issued on such judgment, the justice shall immediately recall the same.

Sec. 155. Upon the service of a writ of certiorari to reverse a judgment, it shall be the duty of the party serving the same, to deliver at the same time to the justice, a copy of the affidavit on which the certiorari was procured, and the justice shall make a special return as to all the facts contained in such affidavit, and of the proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the district court, within ten days after the service of the writ, together with all the papers in the action; and he shall also certify the time when the writ was served upon him.

Sec. 156. The district court shall have power to compel such justice to make or amend such return by rule, attachment or mandamus, as the case may require.

Sec. 157. When the writ of certiorari and return shall be filed with the clerk, the case may be brought on to argument before the district court at any time thereafter, according to the statutes relating thereto.

Sec. 158. The district court shall, after hearing the case, give judgment as the right of the matter may appear, without regarding technical omissions, imperfections or defects in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part, and issue execution as upon other judgments rendered before said court.

Sec. 159. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, such court shall award restitution of the amount so collected, with interest from the time of collection, and execution may issue therefor.

XVIII. OF APPEALS TO THE DISTRICT COURT.

Sec. 160. Who may appeal
161. When and how appeal shall be taken.
162. No appeal allowed unless a bond shall be executed. Effect of bond.
163. In case of appeal from a judgment for the delivery of the possession of premises, a writ of restitution to be issued unless appellant executes a bond. Effect of bond.
164. Appeal being allowed, all further proceedings before justice to be stayed.
165. Property taken on execution to be released, &c.
166. When and in what manner the district court becomes possessed of the cause.
167. Issue to be tried on the same pleadings unless otherwise directed.
168. District court may compel the justice to make a transcript of the proceedings.
169. Appeal not to be dismissed on account of a defective bond.
170. Judgment in the district court.

Sec. 160. Any person considering himself aggrieved by any judgment or decision of a justice of the peace, may, in person or by his agent, appeal therefrom to the district court of the same county where the judgment was rendered, or the decision made.

Sec. 161. Such appeal shall be taken within twenty days after the judgment is rendered, or the decision made, and shall be by filing a notice of appeal with the justice, and serving a copy thereof on the adverse party or his attorney.

Sec. 162. No appeal shall be allowed in any case, unless a bond shall be executed on part of the appellant by one or more sureties in the sum of one hundred dollars, to the effect that the appellant will pay all costs which may be awarded against him on the appeal, or if a stay of proceeding before the justice be claimed, a bond with two or more sureties in a sum equal to twice the amount of the judgment, to the effect that the appellant will pay the costs and judgment, provided the sum appealed from be affirmed, or if affirmed only in part, then to the extent in which it may be affirmed.

Sec. 163. If the judgment appealed from direct the delivery of the possession of premises in an action of forcible entry and detainer, or of a mining claim, a writ of restitution may be issued and executed unless a bond be entered into on the part of the appellant with two or more sureties to the effect that during the possession of such premises or mining claim by the appellant, he will not commit, nor suffer to be committed, any waste, destruction or injury thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of the premises or mining claim, from the time of the appeal until the delivery of possession thereof, and all costs of the appeal. The amount of such bond shall be fixed by the justice before whom the action was tried.

Sec. 164. Upon appeal being made, and a bond filed to stay all proceedings, the justice shall allow the same, and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall thereupon be suspended; and if, in the meantime, execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed.

Sec. 165. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution; and if the body of the defendant have been taken on execution, he shall be discharged from imprisonment.

Sec. 166. On or before the first day of the term of the district court, next after the appeal has been taken, the appellant shall furnish the district court with a transcript of all the entries made in the justice's docket relating to the case, together with all the process and other papers relating to the action, and filed with the justice, which shall be certified by such justice to be correct, and upon the filing of such transcript the district court shall become possessed of the cause, and shall proceed in the same manner as near as may be, as in actions originally commenced in that court, except as herein otherwise provided.

SEC. 167. The issue before the justice shall be tried in the district court without other or new pleadings, unless otherwise directed by the court.

SEC. 168.. Upon an appeal being made and allowed, the district court may by rule and attachment compel the justice to make and deliver to the appellant a certified transcript of the proceedings, upon paying to such justice the fees allowed by law for making such transcript, and whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may by rule and attachment compel him to amend the same.

SEC. 169. No appeal allowed by a justice shall be dismissed on account of the bond being defective, if the appellant will, before the motion is determined, execute and file in the district court such a bond as he should have executed by the allowance of the appeal, and pay all costs that shall be incurred by reason of such defect.

SEC. 170. In all cases of appeal to the district court, if on the trial anew in such court the judgment be against the appellant, in whole or in part, such judgment shall be rendered against him, and his sureties in the bond for the appeal.

XIX. FORMS IN CIVIL ACTIONS IN JUSTICES COURT.

The following, or equivalent forms, may be used by justices of the peace, in civil actions and proceedings under this chapter, to wit:

Territory of Washington, }
County of ———. }

To any sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to summons C. D., if he be found in your county, to be and appear before the undersigned, a justice of the peace in and for said county, on the — day of ———, 18—, at — o'clock in the ——noon, at his office in ———, to answer to A. B. in a civil action, and have you then and there this writ.

Given under my hand this — day of ———, 18—.

J. P.,
Justice of the peace.

FORM OF A WARRANT.

Territory of Washington, } ss.
County of ———. }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to take the body of C. D., if he be found within your county, and bring him forthwith before the undersigned, one of the justices of the peace in and for said county, at his office in ———, to answer A. B. in a civil action; and you are hereby commanded to give due notice thereof to the said plaintiff, his agent or attorney; and have you then and there this writ.

Given under my hand this — day of ———, 18—.

J. P.,
Justice of the peace.

FORM OF SUBPŒNA.

Territory of Washington, } ss.
County of ———, }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace in and for the said county, on the — day of ———, 18—, at — o'clock in the ——noon, at his office in ———, to give evidence in a certain cause, then and there to be tried, between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff, (or defendant, as the case may be.)

Given under my hand this — day of ———, 18—.

J. P.,
Justice of the peace.

FORM OF AN EXECUTION.

Territory of Washington, } ss.
County of ———, }

To the sheriff or any constable of said county:

Whereas, judgment against C. D., for the sum of —— dollars, and for —— dollars, costs of suit, was recovered on the — day of ———, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A. B. These are therefore, in the name of the United States, to command you to levy on the goods and chattels of the said C. D., (excepting such as the law exempts;) and make sale thereof according to law, to the amount of the said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A. B. for his debt, interest, and costs.

Given under my hand this — day of ———, 18—.

J. P.,
Justice of the peace.

FORM OF A VENIRE FOR A JURY.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to summon six good and faithful men of your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the — day of ———, 18—, at — o'clock in the ——noon of said day, at his office in ———, to make a jury for the trial of a civil action, between A. B. plaintiff, and C. D. defendant; and have you then and there this writ.

Given under my hand this — day of ———, 18—.

J. P.,
Justice of the peace.

FORM OF EXECUTION AGAINST THE BODY.

Territory of Washington, }
County of ——— } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C. D., for the sum of —— dollars, and for —— dollars, costs of suit, was recovered on the — day of ———, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A. B., and an execution against his property returned unsatisfied; these are therefore, in the name of the United States, to command you to take the body of the said C. D., and him convey and deliver to the keeper of the jail of said county, who is hereby commanded to receive and keep the said C. D. in safe custody in prison, until the aforesaid sum, and all legal expenses, be paid and satisfied, or until he be discharged therefrom by due course of law; and of this writ make due return within thirty days.

Given under my hand this — day of ———, 18—.

J. P.,
Justice of the peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION.

Territory of Washington, } ss.
County of ———, }

To the sheriff or any constable of said county:

Whereas, judgment against C. D., for the sum of —— dollars, and for —— dollars, costs of suit, was recovered on the — day of ———, 18—, before the undersigned, one of the justices of the peace, at the suit of A. B. And whereas, on the — day of ———, 18—, E. F. became surety to pay said judgment and costs, in —— month from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C. D. and E. F. have failed. These are, therefore, in the name, &c. (as in the common form).

FORM OF ORDER IN REPLEVIN.

Territory of Washington, } ss.
County of ——— }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless, before such delivery, the defendant enter into a sufficient undertaking, for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand this — day of ———, 18—.

J. P.,
Justice of the peace.

FORM OF A WRIT OF ATTACHMENT.

Territory of Washington, } ss.
County of ———, }

To the sheriff or any constable of said county:

In the name of the United States, you are commanded to attach, and safely keep, the goods and chattels, moneys, effects, and credits of C. D., (excepting such as the law exempts,) or so much thereof as shall satisfy the sum of —— dollars, with interest and cost of suit, in whosesoever hands or possession the same may be found in your county, and to provide that the goods and chattels, so attached, may be subject to further proceedings thereon, as the law requires; and of this writ make legal service and due return.

Given under my hand this — day of ———, 18—.

J. P.,
Justice of the peace.

FORM OF SUMMONS IN FORCIBLE ENTRY AND DETAINER.

Territory of Washington, }
County of ———, } ss.

To the sheriff or constable of said county:

Whereas, A. B., of———, hath exhibited unto the undersigned, one of the justices of the peace in and for said county, a complaint against C. D., for a forcible entry and detainer of the following premises, to wit:—hereby commanded to summons the said C. D., if he be found in your county, to appear before the undersigned, on the — day of ———, 18—, at — o'clock in the ———noon, at his office in ———, then and there to make answer to, and defend against the complaint aforesaid. And you are also hereby commanded to serve a copy of the said complaint, on the said C. D.; and of this writ make due return, with your doings thereon.

Given under my hand this — day of ———, 18—.

J. P.,
Justice of the peace.

FORM OF WRIT OF RESTITUTION IN FORCIBLE ENTRY AND DETAINER.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

Whereas, A. B. did make complaint in writing to the undersigned, a justice of the peace in and for said county, against C. D. of the said county, that he had been guilty of a forcible entry and detainer of a certain tract of land (or other possessions,) of the said A. B.: And whereas, a jury was empaneled and sworn to enquire of said complaint, and did return their verdict, that the said C. D. was guilty of a forcible entry and detainer of the following described tract of land, to wit:—(here describe the premises of which the defendant is found guilty of forcibly entering and detaining;) And whereas, judgment was entered thereon by said justice, and that the said A. B. should have restitution of the premises; therefore, in the name of the United States, you are hereby commanded to cause the said C. D. to be removed forthwith from the premises aforesaid, and that the said A. B. have peaceable restitution of the same, and also that you levy of the goods and chattels of C. D., found in your county, the sum of —— dollars, being the amount of costs on the trial aforesaid, together with —— dollars for this writ, and also your own fees, and make return of this writ within thirty days next after the date hereof.

FORM OF UNDERTAKING FOR AN ARREST.

Whereas, an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace in and for ——— county, for a warrant to arrest C. D., defendant, founded upon an affidavit of the said plaintiff, setting forth that C. D. (here state the cause for the arrest): Now, therefore, we, A. B., plaintiff, and E. F., acknowledge ourselves bound to C. D., in the sum of —— dollars, to pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of —— dollars.

Dated this — day of ———, 18—.

A. B.,
E. F.

FORM OF UNDERTAKING IN REPLEVIN.

Whereas, A. B., plaintiff, has commenced an action before J. P., one of the justices of the peace in and for ——— county, against C. D., defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to wit (here set forth the property claimed): Now, therefore, we, A. B., plaintiff, E. F., and G. H., acknowledge ourselves bound unto C. D., in the sum of —— dollars, for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the — day of ———, 18—.

A. B.,
E. F.,
G. H.

FORM OF UNDERTAKING IN ATTACHMENT.

Whereas, an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace in and for ——— county, for a writ of attachment against the personal property of C. D., defendant, (a foreign corporation, a non-resident, or because he has assigned, secreted, &c.): Now, therefore, we, A. B., plaintiff, and E. F., acknowledge ourselves bound to C. D., in the sum of —— dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment, not exceeding the sum of —— dollars.

Dated the — day of ———, 18—.

A. B.,
E. F.

FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT.

Whereas, a writ of attachment has been issued by J. P., one of the justices of the peace in and for ——— county, against the personal property of C. D., defendant, in an action in which A. B. is plaintiff: Now, therefore, we, C. D., defendant, E. F., and G. H., acknowledge ourselves bound unto J. K., constable, in the sum of —— dollars, (double the value of the property,) engaging to deliver the property attached, to wit, (here set forth a list of the articles attached,) or pay the value thereof to the sheriff or constable, to whom execution upon a judgment obtained by the plaintiff in the aforesaid action may be issued.

Dated this — day of ———, 18—.

C. D.,
E. F.,
G. H.

FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE ON CLAIM OF PROPERTY BY A THIRD PERSON.

Whereas, L. M. claims to be the owner of, and have the right to possession, of certain personal property, to wit: (here describe it) which has been taken by J. K., constable in ——— county, upon an execution by J. P., justice of the peace in and for the county of ———, upon a judgment obtained by A. B., plaintiff, against C. D., defendant: Now, therefore, we, A. B., plaintiff, E. F., and G. H., acknowledge ourselves bound unto the said J. K., constable, in the sum of —— dollars, to indemnify the said J. K. against such claim.

A. B.,
E. F.,
G. H.

XX. CRIMINAL JURISDICTION.

Sec. 171. Jurisdiction of justices of the peace.
172. To issue warrant on complaint being made.
173. Authority of justice when an offence is committed within his view.
174. Proceedings of justice on return of warrant.
Prisoner or territory may demand a jury.
Finding of the jury.
Defendant may plead guilty.
No fine assessed or judgment entered without examination of witnesses.
In case of injury to person or property, party injured must be a witness.
175. What witnesses to be summoned.
176. Continuance; on what terms granted.
Judgment on conviction.
Stay of execution.
177. Person convicted may appeal.
Witnesses to recognize.
178. Justice to transmit copy of proceedings to the clerk of the court appealed to.
179. Appellant not required to advance fees on appeal.
If convicted may be required to pay costs of prosecution.
Proceeding on failure to enter and prosecute appeal.
180. Justice at certain dates to pay over to the county treasurer, certain moneys.

Sec. 171. The jurisdiction of justices of the peace in criminal prosecutions, shall be co-extensive with their respective counties, and they shall have concurrent jurisdiction with the district court, in affrays, assaults, assults and battery, violation of estray laws, obstructing of highways and bridges, charging extra tolls at ferries and bridges, neglect of roads by supervisors, public indecency, having obscene books, pamphlets for exhibition or otherwise, forcible entry and detainer, malicious trespass, and on conviction shall have power to fine the person so offending, in any sum not exceeding thirty dollars.

SEC. 172. Any justice shall, on complaint made on oath in writing before him charging any person with the commission of any crime or misdemeanor, of which he has jurisdiction, issue a warrant for the arrest of such person, and cause him to be brought forthwith before him for trial.

SEC. 173. Where any offense is committed in view of any justice, he may, by verbal direction to any constable, or if no constable be present, to any citizen, cause such constable or citizen to arrest such offender, and keep him in custody for the space of one hour, unless such offender shall sooner be taken from such custody by virtue of a warrant issued on complaint on oath. But such person so arrested, shall not be confined in jail, nor put upon any trial, until arrested by virtue of such warrant.

SEC. 174. On the return of any warrant issued by him, it shall be the duty of the justice to docket the cause, and unless continuance be granted, forthwith to hear and determine the cause, and either acquit, convict and punish, or hold to bail the offender, if the offense be bailable and prove to be one which should be tried in the district court, or in default of bail, commit him to jail, as the facts and the law may justify.

The prisoner or the territory may demand a jury, which may be empaneled and sworn as in civil cases, or he may be tried by the justice.

Such justice or jury, if they find the prisoner guilty, shall assess his punishment, or if in their opinion the punishment they are authorized to assess, is not adequate to the offense, they may so find; and in such case, the justice shall order such defendant to enter into recogizance to appear at the next term of the district court, and shall also recognize the witnesses, and proceed as provided by the act regulating criminal proceedings in like cases.

The defendant may plead guilty to any offense charged, but no justice shall assess a fine or enter judgment thereon, until a witness or witnesses have been examined, to state the circumstances of the transaction; and he shall have power either to enter judgment and assess a fine, or order the defendant to enter into recognizance to appear at the next term of the district court; and where the offense charged is an injury to the person or property, the party injured in person or property must be present and examined as a witness, unless prevented by sickness, or beyond the reach of process.

SEC. 175. In all cases arising under this act, it shall be the duty of the justice of the peace to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment, if necessary.

SEC. 176. Continuance may be granted, either on application of the prisoner, or the prosecuting attorney, or prosecuting witness, under the same rules as in civil cases; the costs of such continuance shall abide the event of the prosecution in all cases, and the justice shall recognize the defendant and the witnesses to appear from time to time, in the same manner as is provided in other criminal examinations before him.

In all cases of conviction, under the provisions of this act, the justice shall enter judgment for the fine and costs against the defendant, and may commit him to jail until the judgment is satisfied, or the payment thereof be secured, and further proceedings therein shall be had as in like cases in the district court.

Every defendant may stay the execution for the fine and costs for thirty days, by procuring sufficient sureties to be approved by the justice to enter into recognizance before him for the payment of the fine and costs, the entry of such recognizance shall be made on the docket of the justice, and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the justice shall proceed as in like cases in the district court.

SEC. 177. Every person convicted before a justice of the peace of any offense, may appeal from the sentence within ten days thereafter, to the district court then next to be held in the same county, and such appellant shall be committed to abide the sentence of said justice, until he shall recognize to the territory in such reasonable sum, with such sureties as said justice shall require, with condition to appear at the court appealed to, and there to prosecute his appeal, and to abide the sentence of the court thereon, and in the mean time to keep the peace, and be of good behavior.

The justice shall also recognize the witnesses, or if they are not present, endorse their names on the copy of proceedings.

SEC. 178. The justice on such appeal shall make a copy of the conviction and other proceedings in the case, and transmit the same together with the recognizance and an abstract bill of the costs to the clerk of the court appealed to, who shall issue a subpœna for the witnesses, if they are not under recognizance.

SEC. 179. The appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same, but if convicted in the district court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of the sentence, to pay the cost of the prosecution.

If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and district court may award sentence against him for the offense whereof he was convicted, in like manner as if he had been convicted thereof in that court, and if he be not then in custody, process may be issued to bring him into court to receive sentence.

SEC. 180. It shall be the duty of every justice, on the first Mondays in January and July in each year, and on going out of office, to pay over to the treasurer of his county, all money he may have received on account of fines, and all fees which may have remained unclaimed in his hands for twelve months, and he shall at the same time deliver to such treasurer a statement in writing, showing by items the sources from which such money was derived, and shall append thereto an affidavit, that he he has received no other money for fines, not before paid over to such treasurer, and has no other fees unclaimed for twelve months, in his hands; and the treasurer's receipt therefor, he shall file with the auditor, who shall give him a quietus.

XXI. FORMS OF PROCEEDINGS IN CRIMINAL CASES.

SEC. 181. The following, or equivalent forms, may be used by justices of the peace in criminal proceedings under this act:

Territory of Washington, }
County of ———, } ss.

To the sheriff or constable of said county:

Whereas, A. B. has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that on the —— day of ——— 18—, at ——— in said county (here insert the substance of the complaint, whatever it may be.) Therefore, in the name of the United States, you are commanded forthwith to apprehend the said C. D. and bring him before me, to be dealt with according to law.

Given under my hand this —— day of ——— 18——.

J. P.,
Justice of the peace.

FORM OF SEARCH WARRANT.

Territory of Washington, }
County of ———, } ss.

To the sheriff or constable of said county:

Whereas, A. B. has this day made complaint on oath, to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels, to wit: (here describe them,) the property of the said A. B. have within —— days past, or were on the —— day of ———, by some person or persons unknown, been stolen, taken and carried away out of the possession of the said A. B., in the county aforesaid; and also that the said A. B. verily believes that the said goods or a part thereof, are concealed in or about the house of C. D., in said county, (describing the premises to be searched.) Therefore, in the name of the United States, you are commanded that with the necessary and proper assistance, you enter into the said house, (describe the premises to be searched) and then diligently search for the said goods and chattels; and if the same, or any part thereof, be found on such search, bring the same and also the said C. D. forthwith before me, to be disposed of according to law.

Given under my hand this —— day of ——— 18 —.

J. P.,
Justice of the peace.

FORM OF COMMITMENT WHERE JUSTICE ON THE TRIAL SHALL FIND THAT HE HAS NOT JURISDICTION OF THE CASE.

Territory of Washington, } ss.
County of———, }

To any constable, and to the keeper of the common jail of said county:

Whereas, C. D. of, &c., has been brought this day before the undersigned, one of the justices of the peace in and for said county, charged on the oath of A. B., with having on the —— day of ——— 18 —, in said county, committed the offense of, (here state the offense charged in the warrant,) and in the progress of the trial of said charge, it appearing to the said justice that the said C. D. has been guilty of the offense of, (here state the new offense found on the trial) committed at the time and place aforesaid; and whereas, the said C. D. has failed to give bail in the sum of —— dollars, for his appearance to answer at the next term of the district court, as required by me; therefore, in the name of the United States, &c., (as in the last form) to receive the said C. D. into your custody in the said jail, and him there safely keep until he be discharged by due course of law.

Given under my hand this —— day of ——— 18 —.

J. P.,
Justice of the peace.

FORM OF COMMITMENT TO ANSWER IN THE DISTRICT COURT.

Territory of Washington, } ss.
County of ———, }

To any constable, and to the keeper of the common jail of said county:

Whereas, on the —— day of ——— 18 —, A. B. made complaint in writing and on oath before the undersigned one of the justices of the peace, in and for said county, charging C. D. with having on the —— day of ——— 18 —, committed the crime of larceny (or other crime as the case may be,) and the said C. D. having been brought before and examined by me, and it being sufficiently proved to me that the said C. D. has in said county, committed the crime of larceny (or other crime) by stealing one bay horse of the value of —— dollars of the goods and chattels of the said A. B., and he the said C. D. having failed to give bail for his appearance to answer at the next term of the district court in the sum of —— dollars as required by me; therefore, in the name of the United States, you the said constable are commanded forthwith [to] convey and deliver the said C. D. to the said keeper, and you the said keeper are hereby commanded.

FORM OF WARRANT TO KEEP THE PEACE.

Territory of Washington, } ss.
County of ———, }

To the sheriff or any constable of said county:

Whereas, A. B. has this day complained in writing and under oath, to the undersigned, one of the justices of the peace in and for said county, that he has just cause to fear, and does fear that C. D., late of said county, will, (here state the threatened injury or violence, as sworn to.) Therefore, in the name of the United States, you are commanded to apprehend the said C. D., and bring him forthwith before me, to show cause why he should not give surety to keep the peace and be of good behavior towards all the people of this territory, and the said A. B. especially, and further to be dealt with according to law.

Given under my hand this —— day of ——— 18 —.

J. P.,
Justice of the peace.

FORM OF COMMITMENT UPON SENTENCE.

Territory of Washington, } ss.
County of ———, }

To any constable, and the [keeper of the] common jail of said county:

Whereas, at a justice's court held at my office in said county, for the trial of C. D. for the offense hereinafter stated, the said C. D. was convicted of having on the —— day of ——— 18 —, in said county, committed, (here state the offense) and upon conviction, the said court did adjudge and determine that the said C. D. should be imprisoned in the common county jail of said county, for —— days; therefore, you, the said constable, are commanded in the name of the United States, forthwith to convey and deliver the said C. D. to the said keeper; and you, the said keeper, are hereby commanded to receive the said C. D. into your custody in the said jail, and him there safely keep until the expiration of said —— days, or until he shall thence be discharged by due course of law.

Given under my hand this —— day of ——— 18 —.

J. P.,
Justice of the peace.

FORM OF CERTIFICATE OF CONVICTION.

Territory of Washington, }
County of ———, } ss.

At a justice's court, held at my office in said county before me, one of the justices of the peace, in and for said county, for the trial of C. D. for the offense hereinafter stated, the said C. D. was convicted of having on the —— day of ——— 18 —, at ——— in said county of ———, (here insert the offense,) and upon conviction the said [court] did adjudge and determine that the said C. D. should pay a fine of —— dollars, (or be imprisoned as the case may be,) and the said fine has been paid to me.

Given under my hand this —— day of ——— 18 —.

J. P.,
Justice of the peace.

FORM OF AN EXECUTION.

Territory of Washington, }
County of ———, } ss.

To the sheriff or any constable of said county:

Whereas, at a justice's court held at my office in said county for the trial of C. D. for the offense hereinafter stated, the said C. D. was convicted of having on the —— day of ——— 18—, in said county, committed, (here state the offense,) and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of —— dollars, and —— dollars costs; and whereas the said fine and costs have not been paid; these are therefore, in the name of the United States, to command you to levy on the goods and chattels &c., as in execution in civil cases.

AN ACT RESPECTING EXECUTORS, ADMINISTRATORS, AND THE DISTRIBUTION OF REAL AND PERSONAL ESTATE.

I. *Executors, administrators and the distribution of real and personal property.*
II. *Of the inventory and effects of deceased persons.*
III. *Provision for the support of the family.*
IV. *Of claims against the estate.*
V. *Sales of property by executors and administrators.*
VI. *Of the power and duties of the executor and administrator, and the management of the estate.*
VII. *Of the conveyance of real estate by executors and administrators in certain cases.*
VIII. *Of accounts to be rendered by executors or administrators, and of the payment of debts.*
IX. *Of the partition and distribution of the estate.*
X. *Miscellaneous provisions.*
XI. *Descent of real estate.*
XII. *Distribution of personal estate.*

I. EXECUTORS, ADMINISTRATORS AND THE DISTRIBUTION OF REAL AND PERSONAL PROPERTY.

SEC. 1. Probate court to grant letters. In what county granted.
2. All proceedings under this act to be void in the county where letters were granted.
3. Who disqualified from being executor or administrator.
4. Who entitled to administer.
5. After probate of will, letters testamentary—to whom granted.
6. When two or more executors named in the will—none authorized to act, except such as give bond.
7. Executor or administrator to give bond; form of.
8. When two or more shall be appointed, bond to be given by each.
9. Provision in case the executor be a minor, or absent from the territory.
10. Administrator with the will annexed, to give bond in like manner as executor; proviso;
11. When special administrator may be appointed.
12. Bond to be given by special administrator.
13. Duty of special administrator.
14. When his power shall cease.
15. Not liable to an action; limitation of suits.
16. Application for letters of administration, how made; affidavit to be made.
17. Administrator of goods unadministered, to make a similar affidavit.
18. Executor, and administrator with the will annexed, to make affidavit, that he knows of no other will.
19. Certain persons disqualified from being taken as security on any bond required under this act.
20. Duty of judge of probate in reference to securities.

SEC. 21. Bonds to be recorded.
22. Letters testamentary and of administration to be recorded.
23. Copies to be received in evidence.
24. Letters testamentary, form of.
~~25. Letters testamentary, form of.~~
26. Copy of the will to be attached: when.
27. Effect of discovery of will, after letters granted.
28. If will set aside, effect of on letters.
29. Marriage, a revocation of letters.
30. For what causes, and in what manner probate court may revoke letters.
31, 32, 33. For what causes, and in what manner court may order new bond to be given by executor and administrator.
34. Effects of said bond as to former securities.
35. Effect of failure to give said bond.
36, 37. Executor or administrator may resign; in what manner.
38. Surviving executor or administrator, power and duties of.
39, 40, 41. Death or resignation, &c., of all the executors or administrators, to whom administration granted; effect of; proceedings &c.
42. Limitation of action against securities in such cases.
43, 44. Final settlement of executor or administrator; effect of failure to make; proceedings.
45. Who to pay costs in such case.
46. Inventory of an estate when deceased was a member of a partnership.
47. Copartnership property to remain with surviving partner; bond to be given.
48. Condition of said bond.
49. Said survivor considered as administrator.
50. Authority of executor or administrator on neglect or refusal of surviving partner to give bond.
51. Such executor or administrator to give further bond.
52. Duty of surviving partner, on demand of administrator of deceased partner.
53. Penalty for neglect or refusal to comply with preceding section.
54. When two or more executors or administrators appointed, court may take separate or joint bonds.
55. Incapacity of non-residents.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That, upon the decease of any inhabitant of this territory, letters testamentary, or letters of administration on his estate shall be granted by the probate court for the county in which the mansion house, or place of abode of the deceased, was situated at the time of his death. If he had no mansion house or place of abode in this territory, at the time of his death, and was possessed of lands in this territory, letters may be granted in the county in which such land or a part thereof lies. If the deceased had neither mansion house, place of abode, nor lands in this territory, at the time of his death, letters testamentary, or of administration, may be granted in the county where he died, or in which the greater part of his estate may be. If he died out of the territory, having at the time of his death, neither mansion house, place of abode, or lands in this territory, such letters may be granted in any county where his estate, or a part of it may be.

SEC. 2. All orders, settlements, trials, and other proceedings intrusted by this act to the probate court, shall be had or made in the county in which letters testamentary, or of administration were granted.

SEC. 3. No judge of probate, in his own county, and no person under twenty-one years of age, or of unsound mind, shall be executor or administrator, nor shall the executor of an executor in consequence thereof, be the executor of the first testator.

SEC. 4. Letters of administration shall be granted—

1st. To the widow or next of kin, or both, as the judge of probate shall think fit; and if they do not voluntarily either take or renounce the administration, they shall, if resident in the county, be cited for that purpose by the judge.

2d. If persons so entitled to administration are incompetent, or evidently not suitable for the discharge of the trust, or if they neglect, without any sufficient cause, for sixty days after the decease of the intestate, to take administration of his estate, the judge of probate may grant letters to one or more of the principal creditors, if there be any competent and willing to undertake the trust.

3d. If there be no such creditor, the judge of probate shall commit administration to such other person as he shall think fit, provided however,

4th. That if the deceased were a married woman, administration of her estate shall, in all cases, be granted to her husband, if competent and willing to undertake the trust, unless she shall have made some testamentary disposition of her separate estate, which shall render it necessary or proper to appoint some other person to administer; and, provided also,

5th. That if the deceased were an alien, and left no widow or next of kin in this territory, administration of his estate shall be granted to the consul or vice consul of the nation to which he belonged, if there be any in this territory, and he shall claim the same in preference to his creditors.

SEC. 5. After the probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed, refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, or be disqualified, letters of administration with the will annexed, shall be granted to the person to whom administration would have been granted, if there had been no will.

SEC. 6. When there are two or more persons named co-executors in any will, none shall have authority to act as such, or intermeddle, except those who give bond.

SEC. 7. Every executor or administrator, before entering upon the execution of his trust, shall give bond with sufficient sureties, resident in this territory, in such sum as the judge of probate shall order, payable to the territory of Washington. The form of the bond shall be joint and several, and the penalty shall not be less than twice the value of the estate; which value shall be ascertained by the probate judge, by examination, on oath, of the party applying, and of any other persons he may think proper to examine. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of his trust according to law.

Sec. 8. When two or more persons shall be appointed executors or administrators, the probate judge shall take a separate bond from each of them.

Sec. 9. If the executor be a minor, or absent from the territory letters of administration with the will annexed, shall be granted during the time of such minority or absence, to some other person, unless there be another executor who shall accept the trust, in which case the estate shall be administered by some other executor until the disqualification shall be removed, when such minor having arrived at full age, or such absentee shall be admitted as joint executor with the former, on giving bond as before required.

Sec. 10. Every person who shall be appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give bond to the territory of Washington, in like manner, and with like condition as is required of an executor: *Provided,* That when such administrator shall be appointed in pursuance of the last preceding section, there shall be added to such condition in his bond, as follows: Faithfully to deliver the letters of administration into the probate court, in case such minor shall become of full age, or said absent executor return and obtain letters testamentary on the estate.

Sec. 11. When by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge of probate may in his discretion appoint a special administrator, other than one of the parties, to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he shall nevertheless proceed in the execution of his trust, until he shall be otherwise ordered by the district court to which such appeal is taken.

Sec. 12. Every such administrator shall, before entering on the duties of his trust, give bond with sufficient surety or sureties, in such sum as the judge of probate shall order, payable to the territory of Washington, with condition as required of an executor, or in other cases of administratorship, to make and return into the probate court within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have, or shall, come into his possession or knowledge; and that he will truly account for all the goods, chattels, debts and effects of the deceased, that shall be received by him as such special administrator, whenever required by the judge of probate, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

SEC. 13. Such special administrators shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the judge of probate shall order to be sold, and he shall be allowed such compensation for his services as the judge of probate shall deem reasonable.

SEC. 14. Upon granting letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased, in his hands, and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator *de bonis non* is authorized to prosecute a suit commenced by a former executor or administrator.

SEC. 15. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate, shall begin to run from the time of granting letters testamentary or of administration in usual form, in like manner as if such special administration had not been granted.

SEC. 16. Application for letters of administration shall be made by petition in writing, signed by the applicant or his attorney, and filed in the probate court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and such applicant, at the time of making such application, shall make an affidavit, stating, to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased, and that the deceased died without a will.

SEC. 17. A similar affidavit, with such variations as the case may require, shall be made by administrators of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the granting of letters of administration.

SEC. 18. Every administrator with the will annexed, and executor at the time letters are granted him, shall make an affidavit that he knows of no other and subsequent will of the deceased.

SEC. 19. No judge of the probate court, no sheriff, clerk of a court, or deputy of either, and no attorney at law, shall be taken as security in any bond required to be taken by this act.

SEC. 20. The judge of probate shall take special care to take as securities, men who are solvent and sufficient, and who are not bound in too many other bonds; and to satisfy himself, he may take testimony, and examine, on oath, the applicant or persons offered as security.

SEC. 21. The judge of probate shall cause his clerk to record in a well-bound book, kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular files.

SEC. 22. The judge of probate shall cause his clerk to record in a well-bound book, kept for that purpose, all letters testamentary and of administration, before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded.

SEC. 23. Copies of such letters, or copies of the records thereof, certified by the probate judge, and under the seal of the probate court, shall be received as evidence in any court in this territory.

SEC. 24. Letters testamentary to be issued to executors under the provisions of this act, may be in the following form:

United States of America, } ss.
Territory of Washington. }

In the probate court of the county of ——.

Whereas, the last will of A. B., deceased, was on the —— day of —— A. D., ——, duly exhibited, proven and recorded in our said probate court, a copy of which is hereto annexed, and whereas it appears in and by said last will, that C. D. is appointed executor thereon. Now, therefore, know all men by these presents, that we do hereby authorise the said C. D. to execute said will according to law.

In testimony whereof, I, E. F., clerk of the probate court of said county, on this —— day of —— A. D. ——, at my office in said county, have hereunto set my name and affixed the seal of said court.

SEC. 25. Letters of administration hereafter to be issued in this territory, may be in the following form:

United States of America, } ss.
Territory of Washington, }

In the probate court for the county of ——

Whereas, A. B., late of —— on or about the —— day of —— A. D. ——, died intestate, leaving at the time of his death, property in this territory subject to administration. Now, therefore, know all men by these presents, that we do hereby appoint C. D. (administrator, special administrator, administrator de bonis non, or administrator with the will annexed, as the case may require) upon said estate, and hereby authorize him to administer the same according to law.

In testimony whereof, I, E. F., clerk of the probate court of said county, on this —— day of ——, A. D. ——, at my office in said county, have hereunto set my name and affixed the seal of said court.

SEC. 26. Where the administration with the will annexed is granted, a copy of the will shall be attached to the letters.

SEC. 27. If after letters of administration are granted, a will of the deceased be found, and probate thereof be granted, the letters shall be revoked, and letters testamentary or of administration with the will annexed shall be granted.

SEC. 28. If after a will has been found and letters thereon granted, the will shall afterwards be set aside, the letters shall be revoked, and letters of administration granted on the goods unadministered.

SEC. 29. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve on him; but the marriage shall extinguish her powers and the letters be revoked.

SEC. 30. If any executor or administrator become of unsound mind, or be convicted of felony or other infamous crime, or become a habitual drunkard, or otherwise incapable of, or unsuitable for executing the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or co-administrator, the probate court upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if they find it just, shall revoke the letters granted.

SEC. 31. If any heir, legatee, creditor or other person interested in any estate, file in the probate court an affidavit, stating that the affiant has sufficient cause to believe that the security in the executor's or administrator's bond, has, or is likely to become insolvent, or has died or removed from the territory, or that the principal in such bond has, or is likely to become insolvent, or is wasting the estate, or that the penalty of such bond is sufficient, or that such bond has not been taken according to law, and shall have given the principal in such bond at least ten day's notice of the complaint, the court shall examine into the complaint.

SEC. 32. If any person bound as security in any executor's or administrator's bond, file in the probate court an affidavit stating that the affiant has sufficient reason to believe, and does believe his co-surety has died or is likely to become insolvent, or has removed from the territory, or the principal in such bond has or is likely to become insolvent or is wasting the estate, and shall have given to the principal in such bond at least ten day's notice of such complaint, the court shall examine into the same.

SEC. 33. If the probate court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond and sufficient security to be given.

SEC. 34. Such additional bond when given and approved, shall discharge the former securities from any liability arising from the misconduct of the principal after the filing of the same, and such former securities shall only be liable for such misconduct as happened prior to the giving such new bond.

Sec. 35. If such person fail to give such additional bond and security for ten days after making such order or in such other time as the court may prescribe, his letters from thenceforth shall be deemed to be revoked and his authority from that time cease.

Sec. 36. If any executor or administrator shall publish for six weeks in some newspaper in this territory, in general circulation in the county wherein his letters were granted, a notice of his intention to apply to the probate court to resign his letters, and the court on proof of such publication believe that he should be permitted to resign, it shall so order; said publication of notice in the newspaper upon application to the probate court for that purpose may be dispensed with, and instead thereof, the probate court may require said executor or administrator to post ten written or printed handbills containing said notice, in ten of the most public places in the county where his letters were granted, at least twenty days before the term of the court at which he makes application to resign his letters.

Sec. 37. Such person shall then surrender his letters, his power from that time shall cease, and he shall pay the expenses of publication, and of all the proceedings on such application.

Sec. 38. If there be more than one executor or administrator of an estate, and the letters or part of them be revoked or surrendered, or a part die or in any way become disqualified, those who remain shall perform all the duties required by law respecting the estate.

Sec. 39. If all the executors or administrators of an estate shall die, resign, or their letters be revoked, in case not otherwise provided for, letters of administration of the goods remaining unadministered, shall be granted those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators.

Sec. 40. If any executor or administrator resign, or his letters be revoked, or he die, he or his legal representatives shall account for, pay and deliver to his successor or to the surviving or remaining executor or administrator, all money and property of every kind, and all rights, credits, deeds, evidences of debt and papers of every kind of the deceased at such time and in such manner as the court shall order, on final settlement with such executor or administrator or his legal representatives.

Sec. 41. The succeeding administrator, or remaining executor or administrator may proceed at law against any delinquent, former executor or administrator or his legal representatives, or the securities of either, or against any other person possessed of any part of the estate.

SEC. 42. All suits against securities shall be commenced within six years after the revocation or surrender of letters of administration, or death of the principal.

SEC. 43. If any executor or administrator fail to make either annual or final settlement as required by law, and do not show good cause for such failure after having been cited for that purpose by the probate court, it shall order such executor or administrator to give notice when required, and to make such settlement, and may enforce obedience to such order by attachment, and may revoke his letters.

SEC. 44. If any person who has surrendered his letters testamentary or of administration, or whose letters have been revoked, or the legal representatives of any deceased executor or administrator shall fail to make final settlement as required by law after being cited for that purpose by the probate court, it shall order such delinquents to make such settlement, and may enforce obedience to such order by attachment.

SEC. 45. In all cases where citations or attachments may be issued against any executor, administrator or other person for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

SEC. 46. The executor or administrator on the estate of any deceased member of a co-partnership shall include in the inventory, which he is required by law to return to the probate court, the whole of the partnership property, goods, chattels, rights and credits appraised at their true value as in other cases; but the apprisers shall carry out in the footing, an amount equal only to the deceased's proportional part of the co-partnership interest.

SEC. 47. The co-partnership property thus appraised shall remain with, or be delivered over, as the case may be, to the surviving partner or partners, who may be disposed to undertake the management thereof, agreeably to the conditions of a bond which he or they shall be required to give to the territory of Washington, in such sum and with such securities as are required in other cases of administration.

SEC. 48. The condition of such bond shall in substance be as follows:

The condition of the above bond is that if A. B., or A. B. and C. D., surviving partner or partners of the late firm of ——, shall use due diligence and fidelity in closing the affairs of the said co-partnership, apply the the proceeds thereof towards the payment of the co-partnership debts, render a true account on oath to the probate court, whenever required so to do by said court, of all the co-partnership affairs, and pay over within one year, unless a longer time be allowed by the probate court, to the executor or administrator the excess, if any there be beyond satisfying the partnership debts, then this bond shall be void, otherwise remain in full force.

Sec. 49. The probate court shall have the same authority to cite such survivor or survivors to account and to adjudicate upon such account as in the case of any ordinary administration, and the parties interested shall have the like remedies by means of such bond for misconduct or neglect of such survivor or survivors as may be had against administrators.

Sec. 50. In case the surviving partner or partners having been duly cited for that purpose, shall all neglect or refuse to give the bond required in the —— and —— sections of this act, the executor or administrator on the estate of such deceased partner, on giving a bond as provided in the following sections, shall forthwith take the whole partnership estate, goods, chattels, rights and credits into his own possession, and shall be authorized to use the name of the survivor or survivors in collecting the debts due the late firm, if necessary, and shall, with the partnership property, pay the debts due from the late firm, and return or pay to the survivors his or their proportion of the excess, if any.

Sec. 51. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the probate court to give further bond to its satisfaction, conditioned that he will faithfully execute his trust according to law, which bond may be enforced like other administration bonds.

Sec. 52. Every surviving partner, on the demand of any administrator of a deceased partner, shall exhibit to the appraisers the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement; and in case the administration thereof shall devolve upon such administrator, the said survivor or survivors shall surrender to him, on demand, all the property of such partnership, including their books, papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

Sec. 53. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal to appear before the probate court; and unless he comply with such provision, or show sufficient excuse for his omission, the probate court may commit him to the jail of the county, there to remain until he comply or be discharged by due course of law.

Sec. 54. When two or more persons have been appointed executors or administrators, the probate court may take a separate bond, with securities, from each of them or a joint bond, with securities, from all of them.

Sec. 55. Letters testamentary, or of administration, shall not be granted to a non-resident in this territory; and when an executor or administrator shall become non-resident, the probate court having jurisdiction of the estate of the testator, or intestate of such executor or administrator, shall revoke his letters.

II. OF THE INVENTORY AND EFFECTS OF DECEASED PERSONS.

SEC. 56. Inventory to be made.
57. Estate and effects to be appraised.
58 & 59. Appraisers to be sworn.
What the inventory shall contain.
60. Naming an executor not a discharge of a debt due from him to the testator.
61. Discharge or bequest, in a will, of any debt, not valid as against creditors.
62. Inventory to be signed by the appraisers.
Affidavit of executor or administrator.
63. Proceedings in case of neglect or refusal of executor or administrator to return the inventory within the proper time.
64. Additional inventory, when to be made.
65. Rights and duty of executor or administrator in reference to the property of the deceased.
66. Personal estate first chargeable.
If personal estate be insufficient, real estate may be sold.
67. Any person embezzling or alienating property of the deceased, liable to action of executor.
68 & 69. Proceedings of probate court, upon complaint being made of suspicion of embezzlement, &c., of effects of deceased.
70. Person entrusted with any part of the estate, may be cited to appear before probate court.

SEC. 56. Every executor and administrator shall make and return, upon oath, into the probate court, within two months after his appointment, a true inventory of the real and personal estate of the deceased, which is by law to be administered, and which shall have come to his possession or knowledge.

SEC. 57. The estate and effects comprised in the inventory, shall be appraised by three suitable disinterested persons, who shall be appointed by the court of probate. If any part of the estate shall be in another county than that in which letters are issued, appraisers thereof may be appointed either by the probate judge having jurisdiction of the case, or by the probate judge of such county, and such appraisers shall receive as compensation for their services three dollars per day, to be paid out of the estate.

SEC. 58. Before proceeding to the discharge of their duties, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability; then they shall proceed to estimate and appraise the property, and set down each article separately, with the value thereof in dollars and cents, in figures, opposite the respective articles. The inventory shall contain all the estate of the deceased, real and personal, which is by law to be administered, a statement of all debts, partnership and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon, if any, and their dates, and the sum which, in the judgment of the appraisers, may be collectable on each debt, interest, or security.

SEC. 59. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the possession or knowledge of the executor or administrator; and if none shall come to his possession or knowledge, the fact shall be so stated in the inventory.

SEC. 60. The naming any executor in a will shall not operate as a discharge from any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same, as for so much money in his hands, at the time the debt or demand became due.

SEC. 61. The discharge or bequest in a will of any debt or demand of the testator, against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

SEC. 62. The inventory shall be signed by the appraisers, and the executor or administrator shall take or subscribe an oath before the probate judge, that the inventory contains a true statement of all the estate of the deceased, which has come to his possession or knowledge, and particularly of all moneys belonging to the deceased, and of all just claims of the deceased against the executor or administrator, and the oath shall be endorsed upon or annexed to the inventory.

SEC. 63. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time, not exceeding three months, as the court shall allow, the court shall revoke the letters testamentary or of administration; and the executor or administrator shall be liable on his bond for any injury sustained by the estate through his neglect.

SEC. 64. Whenever property, not mentioned in any inventory that shall have been made, shall come to the knowledge or possession of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned, subscribed and sworn to, as is provided in section —— of this chapter, within two months after the discovery thereof; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

SEC. 65. The executor or administrator shall have a right to the possession of all the real, as well as personal, estate of the deceased, and may receive the rents and profits of the real estate, until the estate shall be settled or delivered over by order of the probate court, to the heirs or devisees, and shall keep in good tenantable repair, all houses, buildings and fixtures thereon, which are under his control.

SEC. 66. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights, and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, the expenses of administration, and the allowance to the family of the deceased, the whole, or so much as may be necessary of the real estate, may be sold for that purpose by the executor or administrator, in the manner prescribed in this act.

SEC. 67. If any person, before the granting of letters testamentary or administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate, in double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

SEC. 68. If any executor, administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate judge, on oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the deceased, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of, or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim, demand, or last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined, either before the probate court for the county where he may be found, or before the court issuing the order or citation; but, in the latter case, if he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

SEC. 69. If the person, so cited, refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain, in close custody, until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court.

SEC. 70. The probate judge, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been entrusted with any part of the estate of the deceased person, to appear before the probate court, and may require such person to give a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section.

III. PROVISION FOR THE SUPPORT OF THE FAMILY.

SEC. 71. Provision for widow and children, until letters have been granted and inventory returned.
72. On return of inventory, all exempt from execution set apart for their use.
73. Allowance to be made in case such be insufficient.
74. Executor or administrator to pay such allowance in preference.
75. To whom property set apart shall belong.
76. Proceedings in case the estate does not exceed three hundred dollars.
77. Where no widow or children, how estate to be disposed of.

SEC. 71. When a person shall die, leaving a widow and minor child or children, the widow, child, or children shall, until letters have been granted and the inventory returned, be entitled to remain in possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

SEC. 72. Upon the return of the inventory, the court shall set apart for the use of the widow, minor child, or children, all the property of the estate by law exempt from execution.

SEC. 73. If the amount, thus exempt, be insufficient for the support of the widow, and minor child or children, the probate court shall make such further reasonable allowance, out of the estate, as may be necessary for the maintenance of the family, according to their circumstances, during the progress in the settlement of the estate, but no such allowance shall be made after one year from the granting letters testamentary or of administration.

SEC. 74. Any allowance made by the court, in accordance with the provisions of the preceding section, shall be paid by the executor or administrator in preference to all other charges, except funeral charges, and expenses of administration.

SEC. 75. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow, and no minor children, such property shall be the property of the widow; if he shall have left also a minor child or children, one half to the widow, and the remainder to such child; or in equal shares to such children, if there are more than one; if there be no widow, then the whole shall belong to the minor child or children.

SEC. 76. If on the return of the inventory of any intestate's estate, who died, leaving a widow or minor children, it shall appear that the value of the estate does not exceed three hundred dollars, the probate court shall, by decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole estate, after the payment of the funeral expenses and expenses of administration, and there shall be no further proceeding in the administration, unless further estate be discovered.

SEC. 77. If intestate leave no widow or minor children, all his estate shall be assets in the hands of the administrator, after payment of funeral expenses and expenses of administration, for the payment of the debts of the deceased, or to be distributed according to law.

IV. OF CLAIMS AGAINST THE ESTATE.

SEC. 78. Notice to be given to creditors of deceased.
79. Notice, with affidavit of printer, to be filed in probate court.
80. Claim not presented within one year after notice, barred. Proviso.
81. Claim to be supported by affidavit.
82. Action of executor or administrator, and probate judge, upon claim so presented.
83. Disposition of claim allowed.
84. Claim rejected, within what time holder must bring suit.
85. No claim allowed, barred by statute of limitation.
86. Action not maintainable on any claim, unless it has first been presented to executor or administrator.
87. Time of vacancy in administration, not included in any limitation herein.
88. Plaintiff in action pending against testator at the time of his death, to present his claim as in other cases.
89. Proceeding when part of a claim is allowed.
90. Effect of judgment rendered against executor or administrator.
91. Judgment rendered against testator in his life time, no execution to issue after death, &c.
92. Doubtful claim may be referred.
93. Proceedings in case of such reference.
94. Where executor or administrator is a creditor, his claim to be presented to probate judge.
95. Court to revoke letters on neglect to give notice to creditors.
96. Statement of all claims to be returned to court. What such statement shall contain.

SEC. 78. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper printed in the county, if there be one; if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased to exhibit them, with the necessary vouchers, within one year after the date of such notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the judge of probate shall deem necessary, but not less than once in a week, for four successive weeks.

SEC. 79. After the notice shall have been published, a copy thereof, together with the affidavit attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator in the probate court.

SEC. 80. If a claim be not presented within one year after the first publication of the notice, it shall be barred: *Provided,* If it be not then due, or if it be contingent, it may be presented within one year from the time it shall become due or absolute.

SEC. 81. Every claim presented to the administrator, shall be supported by the affidavit of the claimant, that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same, to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

SEC. 82. When a claim, accompanied by the affidavit required in the preceding section, has been presented to the executor or administrator, he shall endorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the probate judge, who shall, in the same manner, endorse on it his allowance or rejection.

SEC. 83. Every claim, which has been allowed by the executor or administrator, and the judge of probate, shall be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in the course of the administration.

SEC. 84. When a claim is rejected by either the executor, administrator, or the probate judge, the holder must bring suit in the proper court against the executor or administrator, within three months after it becomes due, otherwise the claim shall be forever barred.

SEC. 85. No claim shall be allowed by the executor, administrator, or probate judge, which is barred by the statute of limitations.

SEC. 86. No holder of any claim against an estate, shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

SEC. 87. The time during which there shall be a vacancy in the administration, shall not be included in any limitations herein prescribed.

SEC. 88. If any action be pending against the testator, or intestate, at the time of his death, the plaintiff shall, in like manner, present his claim to the executor or administrator for allowance, or rejection, authenticated as in other cases; and no recovery shall be had in the action, unless proof be made for the presentment.

Sec. 89. Whenever any claim shall have been presented to any executor or administrator, and the probate judge, and a part thereof shall be allowed, the amount of such allowance shall be stated in the endorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs.

Sec. 90. The effect of any judgment, rendered against any executor or administrator, shall be only to establish the claim, in the same manner as if it had been allowed by the executor or administrator, and the probate judge; and the judgment shall be, that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court, and no execution shall issue upon such judgment, nor shall it create a lien upon the property of the estate, or give the judgment creditor any priority of payment.

Sec. 91. When any judgment has been rendered against the testator or intestate, in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the executor or administrator as any other claim, but need not be supported by the affidavit of the claimant, and if justly due, and unsatisfied, shall be paid in due course of administration:—*Provided*, however, that if it be a lien upon any property of the deceased, the same may be sold for the satisfaction thereof; and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

Sec. 92. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the probate judge, upon filing the agreement and approval of the probate judge in the office of the clerk of the district court, for the county in which the letters testamentary or of administration were granted, and the clerk shall, either in term time or vacation, enter a rule referring the matter in controversy to the person so selected.

Sec. 93. The referee shall thereupon proceed to hear and determine the matter, and make his report thereon to the court in which the rule for his appointment shall have been entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, and be entitled to the same compensation, and subject to the same control, as if the refererence had been made in an action in which such court might, by law, direct a reference. The court may set aside the referee and appoint another in his place, or may set aside or confirm the report, and adjudge costs, as in actions against executors and administrators; and the judgment of the court thereon shall be as valid and effectual, in all respects, as if the same had been rendered in a suit commenced by the ordinary process.

Sec. 94. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be presented for allowance or rejection to the probate judge, and its allowance by the judge shall be sufficient evidence of its correctness.

Sec. 95. If any executor or administrator shall neglect, for two months after his appointment, to give notice to creditors, as prescribed by this article, it shall be the duty of the court to revoke his letters.

Sec. 96. At the same time at which the executor or administrator is required to return his inventory, he shall also return a statement of all claims against the estate which shall have been presented to him, when required by the court, and from time to time thereafter, shall present a statement of claims subsequently presented to him; and in all such statements, he shall designate the names of the creditors, the nature of each claim, when it did or will become due, and whether it was allowed or rejected by him.

V. SALES OF PROPERTY BY EXECUTORS AND ADMINISTRATORS.

Sec. 97. No sale valid unless under order of probate court.
98. Applications for order of sale, how made.
99. When made.
100. Action of court on such applications.
101. Sales of personal property, how made.
102. When court may order private sale.
103. When real estate may be sold.
Petition for such order, what to set forth.
104. Probate judge to order all persons interested, to show cause why such real estate should not be sold.
105. Service and publication of such order.
106. When court shall hear such petition.
107. When any of the heirs or devisees are minors, copy of the order to be served on the guardian.
If no guardian, court to appoint.
108. Evidence on the hearing of such petition.
109. Court may authorize the sale of the whole, or any part of such estate.
110. When probate judge shall make order of sale.
111. What the order shall specify.
112. On neglect of executor or administrator, any person interested may apply for order of sale.
113. Such order to be delivered to executor or administrator.
114. Notice of sale, how made.
115. Sale, when and where made.

Sec. 116. Proceedings in case of adjournment of sale.
117. Duty of executor or administrator when sale is on credit.
118. Proceedings after sale.
119. Person interested may make objection to confirmation of sale.
120. Court to order conveyances to be executed; when.
121. Conveyances, by whom executed, and what they shall set forth.
122. Before confirmation of sale, probate judge to be satisfied that notice was given.
123. Real estate may be sold to pay a legacy, effectual to charge the same.
124. When will designates particular estate to pay debts, &c., same to be paid according to provisions of will.
125. When executor or administrator, with will annexed, may sell without order of probate court.
126. Provision made by will not sufficient to pay debts, &c., estate not disposed of by the will appropriated for that purpose.
127. What estate held liable for the payment of debts, &c.
128. Devisees and legatees to contribute in proportion to their respective interests.
129. Interest of deceased in contract for purchase of lands may be sold; in what manner.
130. Such sale, subject to payments, to become due on such contract.
Sale not to be confirmed until purchaser executes bond.
131. Condition of such bond.
132. On confirmation of sale, executor or administrator to make assignment of contract.
133. Mortgaged estate may be redeemed; when.
134. If redemption not expedient, estate to be sold and conveyance executed.
135. Executor or administrator liable for neglect or misconduct in relation to any sale.
136. Liability of executor or administrator for fraudulent sale.
137. Limitation of actions for recovery of any estate sold.
138. Preceding section not to apply to certain persons.
139. Account of sales to be returned, verified by affidavit.
140. Executor or administrator not to become purchaser.

Sec. 97. No sale of any property shall be valid unless made under order of the probate court.

Sec. 98. All applications for orders of sale shall be by petition, in writing, in which shall be set forth the facts, showing the sale to be necessary, and upon the hearing, any person interested in the estate, may file his written objections, which shall be heard and determined.

Sec. 99. At the term of the court at which the inventory is returned, the executor or administrator shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold, to pay the allowance made to the family of the deceased.

If claims against the estate have been allowed, and a sale of property shall be necessary for the payment of the expenses of the administration, he shall also apply for an order to sell so much of the personal estate as shall be necessary. He shall make a similar application, giving at least two week's previous notice, in a newspaper in general circulation in the county where letters were granted, or by posting written or printed notices thereof, in ten of the most public places in the county, from time to time, so long as any personal property remains in his hands, and a sale is necessary to pay any demands against the estate.

SEC. 100. If it appear to the court that a sale is necessary, it shall so order. In making such sale, the court shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or not specially bequeathed, to be first sold.

SEC. 101. Sales of personal property shall be made at public auction, and after notice given, for at least two weeks; which notice shall be given by notices posted in the public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be stated the time and place of sale.

SEC. 102. If it be made to appear to the satisfaction of the probate court, that it will be for the interest of the estate to allow the executor or administrator to sell some small portion, or the whole of the personal estate, at private sale, the court may so order.

SEC. 103. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family, and all the debts and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon the order of the judge of probate. To obtain such order, he shall present a petition to the probate court, setting forth the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of, a list and the amounts of the debts outstanding against the deceased, as far as the same can be ascertained, a description of all the real estate of which the testator or intestate died seized, the condition and value of the respective lots and portions, the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same.

SEC. 104. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator, to pay the allowance to the family, the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole, or some portion of the real estate, for the payment of such debts, the probate judge shall thereupon make an order, directing all persons interested to appear before him, at a time and place specified, not less than four, nor more than eight weeks, from the time of making such order, to show cause why an order should not be granted to the executor or administrator, to sell so much of the real estate of the deceased as shall be requisite to pay such allowance, charges, and debts.

SEC. 105. A copy of such order, to show cause, shall be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court shall order: *Provided*, however, if all persons interested in the estate shall signify, in writing, their assent of such sale, the notice may be dispensed with.

SEC. 106. The probate judge, at the time and place appointed in such order, or at such other time to which the hearing may be adjourned, upon proof of the due service or publication of a copy of the order, or upon filing the consent, in writing, to such sale, of all parties interested, shall proceed to the hearing of such petition; and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate, who may oppose the application.

SEC. 107. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, the copy of the order shall be served on the guardian. If they have no such guardian, the court shall, before proceeding to act on the petition, appoint some disinterested person their guardian, for the sole purpose of appearing for them, and taking care of their interests in the proceedings.

SEC. 108. The executor or administrator may be examined under oath, and witnesses may be examined by either party, and process may be issued to compel their attendance and testimony, by the probate court, in the same manner, and with like effect, as in other causes.

SEC. 109. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, the court may authorize the sale of the whole estate, or of such part thereof as may be adjudged necessary, and most for the interest of all concerned.

SEC. 110. If the probate judge shall be satisfied, after a full hearing upon the petition, and on examination of the proofs and allegations of the parties interested, that a sale of the whole, or some portion of the real estate, is necessary for the payment of the allowance to the family, and all valid claims against the estate, and charges of administration, or if such sale be assented to by all the persons interested, he shall make an order of sale, authorizing the executor or administrator to sell the whole, or so much, and such parts, of the real estate described in the petition, as he shall judge necessary or beneficial.

SEC. 111. The order shall specify the lands to be sold, and the terms of sale, which may be either for cash, or on credit, not exceeding six months, as the court may direct. If it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the court shall order that part descended to heirs to be sold, before that so devised.

SEC. 112. If the executor or administrator shall neglect to apply for an order of sale, whenever it may be necessary, any person interested in the estate may make application therefor, in the same manner as an executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing.

SEC. 113. Upon making such order, the clerk of the probate court shall deliver [it] to the executor or administrator, who shall be thereupon authorized to sell the real estate as directed.

SEC. 114. When a sale is ordered, notice of the time and place of sale shall be posted in ten of the most public places in the county where the land is situated, at least twenty days before the day of sale, and shall be published in some newspaper in this territory, in general circulation in said county, for three successive weeks next before such sale, in which notice the lands and tenements shall be described with common certainty.

SEC. 115. Such sale shall be in the county where the lands are situated, at public auction, between the hours of ten o'clock in the morning and the setting of the sun the same day; but if the executor or administrator shall deem it for the interest of all concerned that the sale should be postponed, he may adjourn it for any time not exceeding fourteen days.

SEC. 116. In case of such adjournment, notice thereof shall be given by a public proclamation at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting or publishing, as the time and circumstances may admit.

SEC. 117. The executor or administrator shall, when the sale is on credit, take the note or notes of the purchaser for the purchase money, with surety, and mortgage on the property, to secure their payment.

SEC. 118. The executor or administrator making any sale of real estate, shall, at the next term of the court thereafter, make a return of his proceedings to the probate judge, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of expenses of a new sale, may be obtained, he shall vacate such sale, and order another to be had, of which notice shall be given, and the sale shall be conducted, in all respects, as if no previous sale had taken place.

SEC. 119. When the return of the sale is made, any person interested in the estate may file written objections to the confirmation of the sale, and may be heard, and produce witnesses in support of his objections.

SEC. 120. If it appear to the court that the sale was legally made, and fairly conducted, and that the sum bidden was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum, as above specified, cannot be obtained, the court shall make an order confirming the sale, and directing conveyances to be executed; and such sale, from that time, shall be confirmed and valid.

SEC. 121. Such conveyances shall thereupon be executed to the purchaser, by the executor or administrator. They shall contain and set forth, at large, the original order authorizing a sale, and the order confirming the same, and directing the conveyances; and they shall be deemed to convey all the estate, rights and interest of the testator or intestate, at the time of his death.

SEC. 122. Before any order is entered confirming the sale, it shall be proven to the satisfaction of the probate judge, that notice of the sale was given, as herein prescribed, and the order of confirmation shall state that such proof was made.

SEC. 123. When a testator shall have given any legacy, by will, that is effectual to charge real estate, and his goods, chattels, rights, and credits, shall be insufficient to pay such legacy, together with his debts and charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell his real estate, for that purpose, in the same manner, and upon the same terms and conditions, as are prescribed in this act, in case of a sale for the payment of debts.

SEC. 124. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provision of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

SEC. 125. When any division has been made, or any property directed to be sold, the executor or administrator with the will annexed, may proceed to sell, without the order of the probate court; but he shall be bound as an administrator, to give notice of the sale, and to proceed in making the sale, in all respects, as if he were under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions; but in all cases he shall make return of the sale to the probate court, who shall vacate such sale, unless the same shall appear, in all respects, to be made according to law, in like manner as upon sales made by administrators.

SEC. 126. If the provision made by the will, or the estate appropriated be not sufficient to pay the debts and expenses of administration, and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this act.

SEC. 127. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration, and of the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted, if it pear to the court necessary, to carry into effect the intention of the testator, if there shall be other sufficient estate.

SEC. 128. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee, from whom the estate devised to him may be taken for the payment of the debts or expenses; and the probate court, when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute.

SEC. 129. If a deceased person, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land, and under such contracts, may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this act, in respect to lands of which he died seized, except as hereinafter provided.

SEC. 130. Such sale shall be made subject to all payments that may thereafter become due on such contracts; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate judge, until the purchaser shall have executed a bond to the executor or administrator, for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased, in the lands so contracted for, in double the whole amount of the payments thereafter to become due on such contract, with such securities as the probate judge shall approve.

SEC. 131. Such bond shall be conditioned that the purchaser will make all payments for such land as shall become due, after the date of such sale, and will fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs and charges, and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

SEC. 132. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title, and interest, of the persons entitled to the interests of the deceased, in the lands sold at the time of the sale; and such purchaser shall have the same rights and remedies against the vendor of such lands, as the deceased would have had if living.

SEC. 133. If any person die, having mortgaged any real or personal estate, and shall not have devised the same, or provided for the redemption thereof by will, the probate court, upon the application of any person interested, may order the executor or administrator to redeem the estate, out of the personal assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate, and not injurious to creditors.

SEC. 134. If such redemption be not deemed expedient, the court shall order such property to be sold at public sale, which sale shall be with the same notice, and conducted in the same manner, as is required in other cases of real estate, provided for in this act, and the executor or administrator shall execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the deceased would have had in the property, had not the same been mortgaged by him, and the purchase money, after paying the expenses of sale, shall first be applied to the payment and discharge of such mortgage, and the residue in due course of administration.

SEC. 135. If there shall be any neglect or misconduct in the proceedings of the executor or administrator, in relation to any sale, by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

SEC. 136. Any executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this act, shall be liable in double the value of the land sold, as damages, to be recovered in an action by the person or persons having an estate of inheritance therein.

SEC. 137. No action for the recovery of any estate, sold by any executor under the provisions of this act, shall be maintained by any person claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale.

SEC. 138. The preceding section shall not apply to minors, or others under any legal disability to sue at the time when the right of action shall first accrue, but all such persons may commence such action at any time within three years after the removal of the disability.

SEC. 139. Whenever a sale shall have been made by an executor or administrator, of any property of the estate, real or personal, it shall be his duty to return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit.

SEC. 140. No executor or administrator shall, directly or indirectly, purchase any property of the estate.

VI. OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR, AND OF THE MANAGEMENT OF THE ESTATE.

SEC. 141. Duty of executor or administrator.
142, 143, 144 and 145. Action by and against executors and administrators.
146. When executor or administrator may compound with debtors
147. Fraudulent conveyances by deceased may be voided by executor or administrator.
148. Not bound so to, unless on application and security for costs given.
149. Sale and distribution of proceeds of estate so recovered.

SEC. 141. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and collect all debts due to the deceased.

SEC. 142. Actions for the recovery of any property, real or personal, or for the possession, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

SEC. 143. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, carried away or converted into his own use, the goods of their testator or intestate in his lifetime, also may maintain actions for trespass committed on the estate of the deceased during his lifetime.

SEC. 144. Any person, or his personal representatives, shall have an action against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods and chattels of any such person, or committed any trespass on the real estate of such person.

SEC. 145. Any administrator may in his own name for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor or of any former administrator of the same state.

SEC. 146. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator may with the approbation of the probate judge, compound with him and give him a discharge upon receiving a fair and just dividend of his effects.

SEC. 147. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate, or any right or interest therein, with intent to defraud his creditors or to avoid any right, duty or debt of any person, or shall have so conveyed such estate, that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 148. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of the creditors of the deceased, nor unless the creditors making such application, shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the probate judge shall direct.

SEC. 149. The real estate so recovered shall be sold for the payment of debts in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the probate court, and the proceeds of all goods, chattels, rights and credits so recovered, shall be appropriated in payment of debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

VII. OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SEC. 150. When court may decree conveyance by executor.
151. Petition for specific performance, and proceedings thereon.
152. Hearing of petition.
153. Decree for conveyance, when to be made.
154. Appeal from decree.
Executing conveyance &c.
155. When petition to be dismissed without prejudice.
156. Effect of such conveyance.
157. Effect of certified copy of decree.
158. Decree so recorded may be enforced by other process.
159. In case of death of person entitled, his heirs &c., may commence or prosecute proceedings, &c.

SEC. 150. When any [person] who is bound by contract in writing to convey any real estate, shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator, to convey such real estate to the person entitled thereto, in all cases where such deceased person if living might be compelled to make such conveyance.

SEC. 151. On presentation of a petition of any person claiming to be entitled to such conveyance, from any executor or administrator, setting forth the facts upon which such claim is predicated, the probate judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the court, and shall order notice of the pending thereof, and the time and place of hearing, to be published at least four successive weeks next before such hearing, in such newspaper in this territory as the court shall designate.

Sec. 152. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing; and all persons interested in the estate may appear and defend such petition, by filing their objections in writing, and the court may examine on oath the petitioner, and all who may be produced before him for that purpose.

Sec. 153. After a full hearing upon such petition, and objections and examination of the facts and circumstances of the claim, if the probate judge is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, he shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

Sec. 154. Any person interested may appeal from such decree to the district court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be confirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree; and a certified copy thereof shall be recorded with the deed, in the office of the recorder of the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make such conveyance.

Sec. 155. If upon a hearing in the probate court as hereinbefore provided, the probate judge shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petitioner without prejudice to the rights of the petitioner, who may at any time within six months thereafter, proceed in the district court to enforce a specific performance.

Sec. 156. Every conveyance made in pursuance of a decree of the probate court, as provided in this act, shall be effectual to pass the estate contracted for as fully as if the contracting party himself were still living, and then executed the conveyance.

Sec. 157. A copy of the decree for the conveyance made by the probate court, and duly certified and recorded in the office of the recorder where the lands lie, shall give the person entitled to the conveyance a right to the possession of the lands contracted for, and of holding the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Sec. 158. The recording of any decree as provided in the preceding section, shall not prevent the court making such decree from enforcing the same by other process.

Sec. 159. If the person to whom the conveyance was to be made, shall die before the commencement of the proceedings according to the provisions of this act, or before the completion of the conveyance, any person who would have been entitled to the conveyance under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person entitled, may commence such proceedings or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the same persons who would have been entitled to it, or in the executor or administrator for their benefit.

VIII. OF ACCOUNTS TO BE RENDERED BY EXECUTORS OR ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

Sec. 160. Executors, &c., not liable on certain promises unless in writing.
161. How far chargeable with the estate coming into his possession.
162. Not to profit by increase or loss by decrease or destruction without his fault.
163. Not responsible for debts uncollected without his fault.
164. Compensation of executor or administrator.
165. Executor not to purchase claim against estate.
166. Commissions allowed executors.
167. When to render exhibit.
Exhibit what to set forth.
168. Citation to issue if exhibit not rendered.
169. Petition before final settlement to compel executor to render exhibit.
170. Citation to render exhibit, when to issue.
171. Objections to exhibit, how made and trial thereof.
172. Attachment may issue against executor if exhibit not rendred after citation.
173. Account of executor to be rendered one year from appointment.
174. Citation to account at instance of successor.
175. Letters of executor when to be revoked.
176. In rendering account executor to produce voucher.
177. When and what allowance may be made without vouchers.
178. Notice of settlement of account, how given and what to contain.
179. Any person interested in estate may file exceptions to the account.
180. Appointment of guardian to examine accounts.
181. Examination how conducted.
182. Allowance of account conclusive except on minors.
183. Account not to be allowed unless proof of notice be given.
184. Order of payment of debts.
185. How far mortgage preferred to other debts.
186. Proceedings when estate insufficient to pay all debts.
187. Funeral expenses &c., when to be paid.
188. Order for payment on settlement of accounts.
189. Debts not due or disputed, how provided for.
190. Liability of executor to creditor after order of payment.
191. After settlement of accounts &c., creditor cannot call on other creditors, legatees &c., to contribute, but executor liable if notice be not given.
192. Legacies when to be paid and estate distributed.
193. Executor &c., when to pay a settlement.
194. Proceedings if he neglect to render his account.

SEC. 160. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

SEC. 161. Every executor or administrator shall be chargeable in his own account, with the whole estate of the deceased which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit and income of the estate.

SEC. 162. He shall not make profit by the increase, nor suffer loss by the decrease or destruction without his fault of any part of the estate.

He shall account for the excess when he shall have sold any part of the estate for more than the appraisement, and if any has been sold for less than the appraisement he shall not be responsible if the sale has been justly made.

SEC. 163. No executor or administrator shall be accountable for any debts due the estate if it shall appear that they remain uncollected without his fault.

SEC. 164. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as the law provides, but when the deceased by will shall have made some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall by a written instrument filed in the probate court, renounce all claim for compensation provided by the will.

SEC. 165. No administrator or executor shall purchase any claim against the estate he represents, and if he shall have paid any claim for less than its nominal value he shall only be entitled to charge in his account so much as he shall have actually paid.

SEC. 166. When no compensation shall have been provided by will, or the executor shall renounce his claim thereto, he shall be allowed commission on the whole estate, accounted for by him as follows: For the first one thousand dollars, at the rate of seven per cent; for all above that sum and not exceeding two thousand dollars, at the rate of five per cent. for all above that sum at the rate of four per cent., and the same commission shall be allowed to administrators. In all cases such further allowance may be made as the probate judge shall deem just and reasonable, for any extraordinary services not required of an executor or administrator in the common course of his duty: *Provided*, that the total amount of such allowance shall not exceed the amount of commission allowed in this section.

SEC. 167. Within six months after his appointment, and thereafter at any time when required by the court, either upon its own motion or the application of any person interested in the estate, the executor or administrator shall render for the information of the court an exhibit, under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate and the names of the claimants and all other matters necessary to show the condition of its affairs.

SEC. 168. If the executor or administrator fail to render an exhibit within six months as required in the last preceding section, it shall be the duty of the probate judge to issue a citation, requiring him to appear and render it.

SEC. 169. Any person interested in the estate, may at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts, showing that it is necessary and proper that such an exhibit shall be made.

SEC. 170. If the probate judge be satisfied, either from the oath of the applicant or from any other testimony that may be offered, that the facts alleged are true and shall consider the showing of the applicant sufficient, he shall issue a citation to the executor or administrator requiring him to appear on some day named in the citation, which shall be during the term of a court, and render an exhibit as prayed for.

SEC. 171. When an exhibit is rendered by an executor or administrator, any person interested may appear and by objections in writing contest any account or statement therein contained. The court may examine the executor or administrator, and if he have been guilty of negligence or wasted, embezzled or mismanaged the estate, his letters shall be revoked.

SEC. 172. If any executor or administrator neglect or refuse to appear and render an exhibit after having been duly cited, an attachment may be issued against [him,] or his letters may be revoked in the discretion of the court.

SEC. 173. Every executor or administrator shall render a full account of his administration at the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the judge to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation shall have been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

SEC. 174. Whenever the authority of an executor or administrator shall cease, or be revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the same estate, in like manner as might have been cited by any person interested in the estate, during the time he was administrator or executor.

SEC. 175. If the executor or administrator resides without the county, absconds or conceals himself, so that citation cannot be personally served, and shall neglect to render an account within thirty days after having been committed, when the attachment has been executed, his letters shall be revoked.

SEC. 176. In rendering his account, the executor or administrator shall produce vouchers for all expenses and charges which he shall have paid, which vouchers shall be filed and remain in court; and he may be examined on oath touching such payments, and also touching any property and effects of the deceased, and the disposition thereof.

SEC. 177. On the settlement of his account, he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath, positive to the fact of payment, specifying when, where, and to whom payment was made, and if such oath be uncontradicted; but such allowances, in the whole, shall not exceed five hundred dollars for payment in behalf of any one estate.

SEC. 178. When the account is rendered for settlement, notice thereof shall be given by the probate judge, by causing notices to be posted in three of the most public places in the county. The notice shall set forth the name of the estate, of the executor or administrator, and the day appointed for the settlement of accounts, which shall be on some day of a regular term of court.

SEC. 179. On the day appointed, or on any subsequent day to which the hearing may have been adjourned by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

SEC. 180. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who on behalf of the minor may contest the account, as any other person interested might contest it, and who shall be allowed by the court a reasonable compensation for his services.

SEC. 181. The hearing and allegations of the respective parties may be adjourned from time to time as shall be necessary, and the court may appoint one or more auditors to examine the accounts and make report thereon subject to confirmation, and may allow a reasonable compensation to such auditors to be paid out of the estate of the deceased.

SEC. 182. The settlement of the account and the allowance thereof, by the court or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving however to all persons laboring under any legal disability, their rights to proceed against the executor or administrator either individually or upon his bond, within two years after their respective disabilities shall have ceased, and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

SEC. 183. The account shall not be allowed by the court until it be first proven that notice has been given as required by this act, and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

SEC. 184. The debts of the estate shall be paid in the following order:

1st. Funeral expenses;

2d. Expenses of the last sickness;

3d. Debts having preference by the laws of the United States;

4th. Public rates, taxes and excise duties due the territory;

5th. Judgments rendered against the deceased in his lifetime on which execution might have issued at the time of his death, and mortgages in the order of the date of their filing in the recorder's office;

6th. All other demands against the estate.

SEC. 185. The preference given in the preceding section to a mortgage, shall only extend to the proceeds of the property mortgaged, if the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

SEC. 186. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class shall have been fully paid.

SEC. 187. It shall be the duty of the executor or administrator, as soon as he may have sufficient funds in his hands, to pay the funeral expenses, and expenses of the last sickness and the allowance made to the family of the deceased, and he may retain in his hands the necessary expenses of administration, but he shall not be obliged to pay any other debt or any legacy until as prescribed by this act, the payment has been ordered by the court.

SEC. 188. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this act, the court shall make an order for the payment of the debts, as the circumstances of the estate shall require. If there be not sufficient funds in the hands of the executor or administrator, the court shall specify in the decree the sum to be paid each creditor.

SEC. 189. If there be any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to if the claim were due, established, or absolute, shall be paid into the court, where it shall remain to be paid over to the party, when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require: *Provided*, That if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

SEC. 190. Whenever a decree shall have been made by the probate court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon; and execution may be issued on such decree, as upon a judgment in the district court in favor of each creditor; and the same proceedings may be had under such execution, as if it had been issued from the district court. The executor or administrator shall also be liable on his bond to each creditor.

SEC. 191. When the accounts of the executor or administrator have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose name was not included in the order for payment, shall have any right to call upon the creditors who have been paid, or upon the heirs, legatees or devisees, to contribute for the payment of his claim; but if the executor or administrator shall have failed to give the notice to creditors as prescribed in this act, such creditor may recover on the bond of the executor or administrator, the amount of his claim, or such part thereof, as he would have been entitled to, had it been allowed: *Provided*, That this section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute, ten months before such day.

SEC. 192. If all the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies, and the distribution of the estate among the heirs, legatees, or other persons entitled; but if there be debts remaining unpaid, the court shall give such extension of time as may be reasonable, for the final settlement of of the estate.

SEC. 193. At the time designated, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands to pay all the debts due by the estate, the executor or administrator shall render a final account and pray a settlement of the estate.

SEC. 194. If he neglect to render his account, the same proceedings may be had as are prescribed in this act, in regard to the first account to be rendered by him, and all the provisions of this act relative to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

IX. OF THE PARTITION AND DISTRIBUTION OF THE ESTATE.

SEC. 195. When legatee, &c., may petition court for legacy.
196. Notice of such application to be given to all interested.
197. As to those who may oppose application.
198. Application when allowed, and on what terms.
199. Decree may order executor to deliver legacy.
200. Proceedings in case partition be necessary.
201. Petition by executor for order requiring payment of money secured; when court to grant order; nature thereof.
202. Distribution of proceeds.
203 & 204. Decree of distribution, what to contain and when made.
205. Partition of undivided shares.
206. Proceedings when real estate lies in different counties.
207. Notice of application for partition.
208. Partition when shares have been conveyed.
209. Shares how set out.
210. When estates cannot be divided, court may assign the whole to one of parties.
211. When tract of greater value than either party's share and cannot be divided, may be set off to one of the parties.
212. When estate to be sold if partition impracticable.
213. Testator's estate in common to be first severed.
214. Guardians to be appointed for minors, &c., and agents for non-residents.
215. Report of commissioners and proceedings thereon.
216. When partition may be dispensed with.
217. Questions relating to advancements, how determined.
218. When court may appoint agent to take charge of estate for non-resident.
219. Agent to give bond, and court may allow for his services.
220. Unclaimed estate to be sold.
221. Liability of agent.
222. Claim of proceeds by absentee; when court to give certificate.
223. When court to discharge executor from future liability.
224. When letters of administration granted after final settlement.

SEC. 195. At any time, after six months after the time of issuing letters testamentary or of administration, any heir, legatee, or devisee, may present his petition to the court, that the legacy, or share of the estate, to which he is entitled, may be given to him upon his giving bonds with security for the payment of his proportion of the debts of the estate.

SEC. 196. Notice of the application shall be given to the executor or administrator and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of the executor or administrator.

SEC. 197. The executor, administrator, or any person interested in the estate, may appear and resist the application; or any other heir, legatee, or devisee, may make a similar resistance for himself.

SEC. 198. If, on the hearing, it appear to the court that the estate is but little in debt, and that the share of the party or parties applying, may be allowed without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants; *Provided*, Each one of them shall first execute and deliver to the executor or administrator, a bond in such sum as shall be designated by the probate judge, and with sureties to be approved by him, payable to the executor or administrator, conditioned for the payment by the devisee or legatee, whenever required, of his proportion of the debts due from the estate.

SEC. 199. Such decree may order the executor or administrator to deliver to the heir, devisee or legatee, the whole portion of the estate to which he may be entitled, or only a part thereof.

SEC. 200. If in the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

SEC. 201. The costs of the proceedings authorized by the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate, to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the court, if satisfied of the necessity of the payment, shall make an order accordingly, designating the amount and giving the time within which it shall be paid; and if the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

SEC. 202. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or any heir, devisee or legatee, the court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled.

SEC. 203. In the decree the court shall name the person and the portion, or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

SEC. 204. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given in the manner required in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given as it may deem proper.

SEC. 205. When the estate, real and personal, assigned to two or more heirs, devisees or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate judge, who shall be duly sworn to the faithful discharge of their duties, and the court shall issue a warrant to them for that purpose.

Sec. 206. If the real estate be in different counties, the probate court may, if it shall judge proper, appoint different commissioners for each county; and in such cases the estate in each county shall be divided separately, as if there were no other estate to be divided, but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate wherever situated within the territory.

Sec. 207. Such partition and distribution may be ordered on the petition of any of the persons interested in the estate; but before any partition shall be ordered as directed in this act, notice shall be given to all persons interested who shall reside in this territory, or to their guardians and to agents, attorneys or guardians, if there be any in this territory, of such as reside out of the territory, either personally or by public notice as the probate judge may direct.

Sec. 208. Partition of the real estate may be made as provided in this act, although some of the original heirs or devisees may have conveyed their shares to other persons, and such shares shall be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs or devisees.

Sec. 209. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes, bounds and descriptions, that the same may be easily distinguished, unless two or more of the parties shall consent to have their shares set out so as to be held by them in common and undivided.

Sec. 210. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always preferring the males to the females, and among children, preferring the elder to the younger, providing the party so accepting the whole shall pay to the other parties interested, their just proportion of the true value thereof, or secure the same to their satisfaction, and the true value of the estate shall be ascertained by commissioners appointed by the probate court, and sworn for that purpose.

Sec. 211. When any tract of land or tenement, shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off, by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding sections; provided the party so accepting, shall pay, or secure, to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partitions shall not be established by the court, until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

SEC. 212. When it cannot be otherwise fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, or by an agent appointed for the purpose, and distribute the proceeds.

SEC. 213. When partition of real estate among heirs or devisees shall be required, and such real estate shall be undivided and in common with the real estate of any other person, the commissioners shall first divide and sever the estates of the deceased, from the estate with which it lies in common; and such division so made and established by the probate court, shall be binding upon all the persons interested.

SEC. 214. Before any partition shall be made, or any estate divided, as provided in this act, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the territory; and notice of the appointment of such agent shall be given to the commissioners in their warrant; and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

SEC. 215. The commissioners shall make a report of their proceedings in writing, to probate court; and the court may, for sufficient reasons, set aside such report, and remit the same to the same commissioners, or appoint others; and the report, when finally accepted and established, shall be recorded in the probate court, and a copy thereof attested by the judge of probate, under the seal of the court, shall be recorded in the office of the recorder in the county where the land lies.

SEC. 216. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall have been decreed, or some of them, shall request that such partition be made.

SEC. 217. All questions as to advancements made, or alleged to have been made by the deceased, to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners, and the final decree of the probate court, or in case of appeal, of the district or supreme courts, shall be binding on all parties interested in the estate.

SEC. 218. When any estate shall have been assigned by decree of the court, or distributed by commissioners, as provided in this act, to any person residing out of this territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same, for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absentee in the partition and distribution.

SEC. 219. Such agent shall give a bond to the territory of Washington, to be approved by the probate judge, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

SEC. 220. When the estate shall have remained in the hands of the agent unclaimed for one year, it shall be sold under the order of the court, and the proceeds, deducting the expenses of sale, to be allowed by the court, shall be paid into the territorial treasury. When the payment is made, the agent shall take from the treasurer duplicate receipts, one of which he shall file in the office of the territorial auditor, and the other in the probate court.

SEC. 221. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of sale as required by the preceding section, and may be sued thereon by any person interested.

SEC. 222. When any person shall appear and claim the money paid into the treasury, the probate court making the distribution, being first satisfied of his right, shall grant him a certificate under its seal, and upon the presentation of the certificate to the auditor, he shall draw his warrant on the treasurer for the amount.

SEC. 223. When the estate has been fully administered, and it shall have been shown by the executor or administrator by the production of satisfactory vouchers that he has paid all sums of money due from him, and delivered up under order of the court all property of the estate to the persons entitled, the court shall make a decree, discharging him from all liability to be incurred thereafter.

SEC. 224. The final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or it should become necessary and proper from any cause that letters should be again issued.

X. MISCELLANEOUS PROVISIONS.

SEC. 225. All orders and decrees to be entered.
Judge when to sign minutes.
226. Notice, when to be given by citation.
227 & 228. Citation, how and when served; original to be returned.
229. Writs, &c., to be signed by judge, under seal of court.
230. Practice in district court, how far applicable to probate court.

SEC. 225. All orders and decrees made by the probate court during its term, shall be entered at length on the records of the court, and also all orders which the judge is empowered to make out of term time, and which are by this act specially required to be so entered, and upon the close of each term, the judge shall sign the minutes of the proceedings.

SEC. 226. Whenever personal notice is required by this act to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation, issued from the court, signed by the judge, and under the seal of the court, directed to the sheriff of the proper county, requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in such citation. In the body of the citation shall be briefly stated the nature or character of the proceedings.

SEC. 227. The officer to whom the citation is directed, shall serve it by delivering a copy to the person named therein, or to each of them, if there be more than one, and shall return the original to the court according to its direction, endorsing thereon the time and manner of service.

SEC. 228. When no other time has been specially prescribed, citation shall be served at least five days before return day.

SEC. 229. All writs and processes issued from the probate court, shall be signed by the judge, and under the seal of the court.

SEC. 230. The practice in the district court shall be applicable to proceedings in the probate court, so far as the same does not conflict with any enactment specially applicable to the probate court, or is not inconsistent with the provisions of this act.

XI. DESCENT OF REAL ESTATE.

SEC. 231. Lands, &c., how to descend.
232. Illegitimate children, when to inherit.
233. Estate of illegitimate children, to whom to descend.
234. Bastards legitimatized by marriage of parents.
235. Degrees of kindred, how computed.
Half blood to inherit.
236. Advancement, how to be considered.
237. When advancement to exclude heir from further portion.
238. Advancement, how estimated.
239. Gifts, when deemed advancements.
240. Value of advancement, how estimated.
241. In case of death of heir, advancement to be allowed by representatives.
242. Construction of this act.
243. Certain words defined.

SEC. 231. When any person shall die seized of any lands, tenements, or hereditaments, or any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, as follows:

1st. In equal shares to his children, and to the issue of any deceased child, by right of representation, and if there be no child of the intestate living at the time of his death, his estate shall descend to all his other lineal descendants; and if all the same descendants are in the same degree of kindred to the intestate, they shall have the estate equally, otherwise they shall take according to representation.

2d. If he shall leave no issue, his estate shall descend to his father.

3d. If he shall leave no issue nor father, his estate shall descend, in equal shares, to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation: *Provided*, That if he shall leave a mother also, she shall take an equal share with the brothers and sisters.

4th. If the intestate shall leave no issue nor father, and no brother nor sister living at his death, his estate shall descend to his mother, to the exclusion of the issue of his deceased brothers or sisters.

5th. If the intestate shall leave no issue, father, mother, brother, or sister, his estate shall descend to his next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote: *Provided*, however,

6th. If any person shall die leaving several children, or leaving one child, and the issue of one or more others, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation.

7th. If at the death of such child who shall die under age, not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent, shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the estate equally, otherwise they shall take according to the right of representation.

8th. If the intestate shall leave no kindred, his estate shall escheat to the territory.

Sec. 232. Every illegitimate child shall be considered an heir of his mother, and shall inherit her estate, in whole or in part, as the case may be, in like manner as if he had been born in lawful wedlock; but such illegitimate child shall not be allowed to claim, as representing his mother, any part of the estate of her kindred, either lineal or collateral.

SEC. 233. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, except in the case provided for in the following section.

SEC. 234. When after the birth of an illegitimate child his parents shall intermarry, and his father, after the marriage, shall acknowledge him as his child, such child shall be considered legitimate, to all intents and purposes.

SEC. 235. The degrees of kindred shall be computed according to the rules of the civil law, and the kindred of the half blood shall inherit equally with those of the whole blood, in the same degree.

SEC. 236. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child, or other lineal descendant, shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child, or other descendant, towards his share of the intestate's estate.

SEC. 237. If the amount of such advancement shall exceed the share of the heir, so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to so much more as will give him his full share of the estate of the deceased.

SEC. 238. If any such advancement shall have been made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if it be in personal estate, and if in either case it shall exceed the share of real or personal estate, respectively, that would have come to the heir, so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate, as will make the whole share equal to those of the other heirs, who are in the same degree with him.

SEC. 239. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing, by the intestate, as an advancement, or acknowledged in writing as such by the child, or other descendant.

SEC. 240. If the value of the estate, so advanced, shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered of that value in the division and distribution of the estate, otherwise it shall be estimated at its value when given.

SEC. 241. If any child or lineal descendant, so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heir, so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

SEC. 242. Nothing contained in this act shall effect the title of a husband as tenant by courtesy, nor that of a widow as tenant in dower.

SEC. 243. The word issue, as used in this act, includes all the lawful lineal descendants of the ancestor; and the words real estate include all lands, tenements, and hereditaments, and all rights thereto, and all interests therein possessed, and claimed in fee simple, or for the life of a third person.

"Inheritance or succession by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person, that their parent would have taken if living.—Posthumous children are considered as living at the death of their parent.

XII. DISTRIBUTION OF PERSONAL ESTATE.

SEC. 244. Order of distribution, and application of personal estate.
245. Widow entitled to one half of estate, deducting advancements.

SEC. 244. When any person shall die possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

1st. The widow, if any, shall be allowed all articles of her apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessaries for the use of herself and family under her care, as shall be allowed and ordered in pursuance of the provisions of this act, and this allowance shall be made as well when the widow waives the provision made for her in the will of the husband, as when he dies intestate.

2d. The personal estate remaining after such allowance, shall be applied to the payment of the debts of the deceased, with the charges for his funeral, and the settling of the estate.

3d. The residue, if any, of the personal estate shall be distributed among the same persons as would be entitled to the real estate by this act, and in the same proportion, as provided, excepting as herein further provided.

4th. If the intestate were a married woman, her husband shall be entitled to the whole of the said residue of the personal estate.

5th. If the intestate leave a widow and issue, the widow shall be entitled to one half of said residue.

6th. If there be no issue, the widow shall be entitled to the whole of said residue.

7th. If there be no husband, widow, or kindred of the intestate, the whole shall escheat to the territory.

SEC. 245. If the intestate leave a widow and issue, and any of the issue have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the one half part to be assigned to the widow, but she shall be entitled to the one half only of the said residue, after deducting the value of the advancement.

AN ACT ESTABLISHING PROBATE COURTS FOR THE TERRITORY OF WASHINGTON.

SEC. 1. Election of probate judge.
His court and term of office.
2. Commission to issue to probate judge.
3. Powers of probate courts.
4. Probate court to keep a seal.
5. Probate court to be a court of record.
6. When probate court may appoint a sheriff.
7. Compulsory powers of the probate court.
8. When a judge of probate is not allowed to sit.
9. In the above case, papers to be certified to the district court.
10. Provisions for the adjournment of the probate courts and special terms thereof.
11. Judge of probate to be a conservator of the peace.
12. Provision for trial by jury in probate courts.
13. Of the conduction of trials by jury.
14. Processes from the probate court to be tested and sealed.
15. Powers of the probate court to enforce their orders.
16. When letters of administration may issue in vacation.
Proviso.
17. County auditor to be clerk of the probate court.
18. Of the meetings of the probate courts.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That there shall be elected at the first general election, and every three years thereafter, in each county in this territory, one suitable person, who shall have the qualifications of an elector, who shall be styled the "probate judge," and the court hereby constituted shall be called the "probate court," and such judge shall hold his office for three years, and until his successor is duly elected and qualified.

SEC. 2. The clerk of the board of county commissioners shall certify the name of the person elected under this act, to the governor of the territory, who shall thereupon commission all such persons judges of probate, for the term for which they may have been elected.

SEC. 3. That the probate court in their respective counties, shall have and possess the following powers: Exclusive and original jurisdiction in all cases relative to the probate of last wills and testaments; the granting letters testamentary and of administration and revoking the same; the appointment and displacing guardians of orphan minors, and of persons of unsound mind, and the binding of apprentices; in the settlement and allowance of accounts of executors, administrators and guardians; to hear and determine all disputes and controversies respecting wills, the right of executorship, administration and guardianship, or relative to the duties and accounts of executors, administrators and guardians, and to hear and determine all disputes and controversies between masters and their apprentices; to hear and determine all suits and other proceedings instituted against executors and administrators, upon any demand against the estate of their testator or intestate, when such demand shall not exceed two hundred dollars, subject to an appeal to the district court in such manner as may be provided by law; to award process, and cause to come before said court, all and every person or persons whom they may deem it necessary to examine, whether parties or witnesses, or who, as executors, administrators, or guardians, or otherwise, shall be entrusted with, or in any wise accountable for any lands, tenements, goods or chattels, belonging to any minor, orphan, or person of unsound mind, or estate of any deceased person, and may examine any person on oath or affirmation touching any matter of controversy before them.

SEC. 4. That said court shall provide and keep a suitable seal.

SEC. 5. That the court established by this act, shall be a court of record, and shall keep just and faithful records of its proceedings, and shall have power to issue all writs which may be necessary to the exercise of its jurisdiction according to the principles and usages of law.

SEC. 6. That when at any term of the probate court there is no sheriff or coroner, or either of them is not qualified to act, or both are from any cause disqualified, the court may appoint one or more persons to execute process and perform any other duty of the sheriff, who shall be entitled to such fees for his services as are allowed by law to sheriffs, in like cases.

SEC. 7. The said court may enforce by attachment, the return of any writ or process sent out of the same, and the payment of any moneys had and received by any officer thereof, whose duty it is made by law to pay over, and the delivery of papers entrusted to such officer officially.

SEC. 8. That no judge of the probate court shall sit on the determination of any cause or proceeding in which he is interested, or related within the fourth degree to either party, or shall have been counsel.

SEC. 9. That if the judge be disqualified from any cause for sitting on the determination of any cause or proceeding pending before him, the same shall be certified with the original papers to the district court of the county, which shall proceed thereon to final judgment and determination, the same as the probate court might have done.

SEC. 10. That if said court shall not be held on the first day of the term, such court shall stand adjourned from day to day until the evening of the third day. If at that time the judge shall not have appeared and opened court, the same shall stand adjourned until the next regular term. Special adjourned terms may be held in continuation of the regular term, upon its being so ordered by the court in term time, and entered by the clerk upon the record of the court.

SEC. 11. That each judge of probate court shall be a conservator of the peace throughout his county.

SEC. 12. That when any issue is pending, proper to be tried by a jury, the court in its discretion may order a jury to be summoned by the sheriff, or selected in any manner as may be prescribed by law, for selecting juries in the district court.

SEC. 13. That trials by jury in said court shall be governed in all cases as similar trials in the district court, and writs of inquiry may in like manner be awarded and executed, the verdicts of juries be set aside and new trials granted.

SEC. 14. That all process issuing out of the probate court, shall be tested by the clerk, and sealed with the seal of the court.

SEC. 15. That the probate court shall have the same power and authority under like restrictions and rules of law, to enforce and execute their orders, rules, judgments and decrees, as may be prescribed by law for the district courts of this territory.

SEC. 16. That it shall be the duty of the clerk of said probate court, to issue letters of administration to any person applying for the same in vacation ; subject however, to the approval or disapproval of said court at its next session, and subject to all the liabilities and restrictions provided for by law : *Provided however*, That when there is a last will and testament of any deceased person, letters of administration or executorship, shall be granted by the said probate court, when said court is in open session, and said letters shall be signed by the said court, and certified by the clerk thereof.

SEC. 17. That the county auditor, or clerk of the board of county commissioners, be the clerk of the probate court in each county in this territory.

SEC. 18. The probate court shall meet in each and every county, at the court house, or at the usual place of holding the district court for such county, on the second Monday in April, July, September and December, in each and every year : *Provided*, however, if the district court shall meet on any of the before mentioned days, the probate court shall meet on the Monday preceding.

Passed April 14th, 1854.

AN ACT RELATING TO WILLS.

SEC. 1. Persons competent to make wills devising estates.
2. Persons competent to make disposition of goods and effects.
3. Rights of married women to dispose of real estate.
4. Requisites of a will.
5. Witnesses to a will.
6. No revocation of a will, except by subsequent will.
7. Marriage and subsequent birth of issue, to work a revocation.
8. After marriage of a woman, revokes a will made before marriage.
9. Subsequent bond, on valuable consideration, does not work revocation of a devise.
10. Incumbrances on real estate, made subsequent to a devise, charge the devised estate or interest.
11. Subsequent birth of child or children, with heirs-at-law, not provided for in a will, shall be entitled to proportionate share of testator's estate, as though named, and devisees and legatees shall refund.
12. Exception to act of last section, where advancement made during lifetime of testator.
13. Lineal descendants of devisee take the share of devisee, should devisee die before testator.
14. Execution of second will revokes the first, except where by such second will the first is specifically revised and republished.
15. Probate court shall prove wills.
16. Place where a will shall be proved.
17. Certificate of probate or rejection.
18. Power of probate court to procure proof by witness, absent through sickness or other cause.
19. Testimony before a commission of same force as taken in the probate court.
20. How and when hand writing of testator may be proved, when only one subscribing witness appears.
21. How a will may be proved when all subscribing witnesses fail to appear.
22. All testimony in support of will to be in writing.
23. No nuncupative will good for estate over two hundred dollars.
24. A mariner or soldier may dispose of wages and other personal property.
25. Limitation of time to prove nuncupative will.
26. All wills shall be recorded and filed.
27. Wills, properly proved, may be read as evidence.
28. Exemplification from probate court, of like effect as the original.
29. Where wills devise lands in several counties, copy of will must be recorded in each county six months after probate.
30. Wills may be contested within five years after probate, and mode of such contest.
31. Verdict of jury shall be final, &c.
32. Probate or rejection shall be final, if not contested within five years.
33. In trials on validity of will, the oath of subscribing witness at time of probate, shall be admitted, if such witness cannot be procured.
34. Rights of non-residents of this territory, to devise real or personal estate within this territory, and requisites of wills made by non-resident testators.
35. Records of copies of wills of non-resident testators.
36. Contesting validity of wills of non-resident testators.
37. Devise to an attesting witness of a will to be void, though his testimony good in regard to execution of remainder of will.

38. If such attesting witness be an heir-at-law, and the will be not established, he shall have so much of share, as not exceeds the intended devise.
39. If sufficient other competent witnesses prove a will, excluding a witness to whom devise is made, the devise to such witness valid.
40. Creditors, whose debts are charged, attesting the execution of any will, made competent witnesses.
41. Attesting witness to will, to whom legacy is given, may be a witness of execution of will, if paid, or if he refuses to receive such legacy before giving testimony.
42. Credibility of witnesses, question for court or jury.
43. A legatee or devisee, dying in the time of testator, without having received or released said legacy, such devisee shall be deemed a legal witness.
44. Persons to whom null and void bequests are made, prohibited from receiving or demanding such bequests.
45. Estates for life and remainders created.
46. Where there are no express words creating "life estate," devise is deemed to be a fee simple.
47. When any part of testator's estate shall be taken in execution, duty of co-devisees as to remainder of estate.
48. Duty of probate court in the making up of share devises, where refunding is necessary by the devisees.
49. Term "will" extended to apply to "codicil."
50. Courts to have regard to the intention of testators.
51. Compulsory power of probate court in case of refusal of party to produce a will.
52. Time of law going into effect.

SEC. 1. *Be it enacted by the Legislature of Washington Territory,* That every person of twenty-one years of age and upwards, of sound mind, may by last will, devise all his estate, real and personal, saving to the widow her dower.

SEC. 2. Every person over the age of eighteen years, of sound mind, may by last will, dispose of his goods and chattels.

SEC. 3. A married woman may by will, dispose of any real estate held in her own right, subject to any rights which her husband may have as tenant by courtesy.

SEC. 4. Every will shall be in writing, signed by the testator or by some other person under his direction in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator.

SEC. 5. Every person who shall sign the testator's name to any will by his direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

SEC. 6. No will in writing, except in cases hereinafter mentioned, nor any part thereof shall be revoked except by a subsequent will in writing, or by burning, cancelling, tearing, or obliterating the same, by the testator, or in his presence, and by his consent and direction.

SEC. 7. If after making a will, disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage born to him after his death, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

SEC. 8. A will made by an unmarried woman shall be deemed revoked by her subsequent marriage.

SEC. 9. A bond, covenant, or agreement, made for a valuable consideration by a testator, to convey any property, devised or bequeathed in any last will, previously made, shall not be deemed a revocation of such previous devise or bequest, either in law or equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for the specific performance, or otherwise against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

SEC. 10. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will, relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or incumbrance.

SEC. 11. If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as he shall regard such child or children, or their descendants, not provided for, shall be deemed to die intestate, and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them, and all the other heirs, devisees, and legatees, shall refund their proportional part.

SEC. 12. If such child or children, or their descendants, shall have an equal proportion of the testator's estate, bestowed on them in the testator's lifetime by way of advancement, they shall take nothing by virtue of the provision of the preceding section.

SEC. 13. When any estate shall be devised to any child, grand-child, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator.

SEC. 14. If after making any will, the testator shall duly make and execute a second will, the destruction, cancelling, or revocation of such second will, shall not revive the first will, unless it appears by the terms of such revocation, that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

SEC. 15. The probate court shall take proof of last wills.

SEC. 16. If the testator have a mansion, house, or known place of abode in any county, his will shall there be proved; if he have no place of residence, and lands be devised, it shall be proved in the county where any part of the lands lie, and if he have no residence, and there be no lands devised, the will shall be proved in the county in which the testator died, or if he died out of the territory, then in any county.

SEC. 17. When any will is exhibited to be proven, the court may immediately receive the proof, and grant a certificate of probate, or if such will be rejected, grant a certificate of rejection.

SEC. 18. If any witness be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the territory, or more than thirty miles from the place where the will is to be proven, such court may issue a commission annexed to such will, and directed to any judge, justice of the peace, or mayor, or other person, empowering him to take and certify the attestation of such witness.

SEC. 19. If such witness appear before such officers, and make oath or affirmation that the testator signed the writing annexed to such commission, as his last will, or that some other person signed it by his direction, and in his presence, that he was of sound mind, that the witness subscribed his name thereto in the presence of the testator, the testimony, so taken, shall have the same force as if taken before the court.

SEC. 20. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the hand writing of the testator, and of the witnesses dead, insane, or residence unknown, and of such other circumstances as would be sufficient to prove such will on a trial at common law.

SEC. 21. If it shall appear to the satisfaction of the court that all the subscribing witnesses are dead, insane, or their residence unknown, the court shall take and receive such proof of the hand writing of the testator, and subscribing witnesses to the will, and of such other facts and circumstances as would be sufficient to prove such will in a trial at law.

SEC. 22. All the testimony adduced in support of the will, shall be reduced to writing, signed by the witnesses, and certified by the judge of probate.

SEC. 23. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, nor unless the same be proven by two witnesses, who were present at the making thereof, nor unless it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness, and at the dwelling house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home, and died before his return.

SEC. 24. Any mariner at sea, or soldier in the military service, may dispose of his wages, or other personal property, as he might have done by common law, or by reducing the same to writing.

SEC. 25. No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased, that they may contest the will if they think proper.

SEC. 26. All wills shall be recorded by the probate judge, in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed.

SEC. 27. Every will proved according to the provisions of this act, recorded and certified by the judge of probate, and attested by his seal of office, may be read as evidence without any further proof.

SEC. 28. The record of any will made, proved and recorded as aforesaid, and the exemplification of such record by the judge of probate, in whose custody the same may be, shall be received as evidence, and shall be as effectual, in all cases, as the original would be if produced and proven, and may in like manner be repelled by contrary proof.

SEC. 29. In all cases where lands devised by last will are situated in different counties, a copy of such will shall be recorded in the recorder's office in each county, within six months after probate.

SEC. 30. If any person interested in the probate of any will, shall appear within five years after the probate or rejection thereof, and by petition to the district court for the county, contest the validity of the will, or pray to have the will proven which has been rejected, an issue shall be made up, whether the writing produced be the will of the testator or not, which shall be tried by a jury, or if neither party require a jury, by the court.

SEC. 31. The verdict of the jury, or the finding and judgment of the court, shall be final, saving to the court the right of granting a new trial, as in other cases, and to either party an appeal, in matters of law, to the supreme court.

SEC. 32. If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, saving to infants, married women, persons absent from the United States, or of unsound mind, a like period of five years after their respective disabilities are removed.

SEC. 33. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of such witness examined at the time of probate, shall be admitted as evidence, and shall have such right as the court or jury may think it desirous.

SEC. 34. Any person not an inhabitant, but owning property, real or personal, in this territory, may devise or bequeath such property by last will, executed and proved (if real estate be devised) according to the laws of this territory, or (if personal estate be bequeathed) according to the laws of this territory, or of the country, state, or territory in which the will shall be proved.

SEC. 35. Copies of such will, and the probate thereof, shall be recorded in the same manner as wills executed and proven in this territory, and shall be admitted in evidence in the same manner, and with like effect.

SEC. 36. Any such will may be contested and annulled within the same time, and in the same manner, as wills executed and proven in this territory.

SEC. 37. If any person has attested, or shall attest, the execution of any will, to whom any beneficial devise, legacy, estate, interest, gift, or appointment of, or affecting any real or personal estate, other than or except charges in lands, tenements, or hereditaments, for the payment of any debt or debts, shall be thereby given or made, such devise, legacy, estate, gift, or appointment, shall so far only as concerns such person attesting the execution of such will, or any person claiming under him, be void; and such person shall be admitted as a witness to the execution of such will.

SEC. 38. If any such witness would be entitled to any share in the testator's estate, in case the will should not be established, then so much of the estate as would have descended, or would have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will, in proportion to, and out of the parts devised and bequeathed to him.

SEC. 39. If the execution of such will be attested by a sufficient number of other competent witnesses, as required by this act, then such devise, legacy, interest, estate, gift, or appointment, shall be valid.

SEC. 40. If by any will any real estate be charged with any debt, and any creditor, whose debt is so charged, has attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

SEC. 41. If any person has attested, or shall attest, the execution of any will, to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, shall have been paid, or have accepted, or released, or shall refuse to accept such bequest or legacy, upon tender thereof, such person shall be admitted as a witness to the execution of such will.

Sec. 42. The credit of such witness shall be subject to the consideration of the court or jury.

Sec. 43. If any legatee or devisee, who has attested, or shall attest, the execution of any will, shall have died, or die in the lifetime of the testator, or before he shall have received or released the legacy or bequest, so given to him, and before he shall have refused to receive such legacy or bequest, on a tender made thereof, such legatee or devisee shall be deemed a legal witness to the execution of such will.

Sec. 44. No person to whom any estate, gift, or appointment, shall be given or made, which is hereby declared to be null and void, or who shall have refused to receive such legacy or bequest, upon tender made, and who shall have been examined as a witness concerning the execution of such will, shall, after he has been so examined, demand or receive, except as is provided in the thirty-eighth section, any profit or benefit of, or from, any such estate, interest, gift, or appointment, so given or made to him, by any such will or demand, receive or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

Sec. 45. If any person, by last will, devise any real estate to any person, for the term of such person's life, and after his or her death, his or her children, or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devises, and remainder in fee simple in such children.

Sec. 46. In all devises of lands, or other estate in this territory, in which the words "heirs and assigns," or "heirs and assigns forever," are omitted, and no expressions are contained in such will whereby it shall appear that such devise was intended to convey an estate for life only, and no farther devise be made of the devised premises, to take effect after the death of the devisee, to whom the same shall be given, it shall be understood to be the intention of the testator thereby to devise an absolute estate in the same, and shall convey an estate in fee simple to the devisee for all such devised premises.

Sec. 47. When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs, shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Sec. 48. When any devisees, legatees, or heirs, shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise, or legacy of any other devisee, legatee, or heir, the probate court, upon the petition of the person entitled to contribution or distribution of such estate, shall order the same to be made according to equity, and enforce such order with like effect as decrees in courts of equity.

SEC. 49. The term "will," as used in this act, shall be so construed as to include all codicils, as well as wills.

SEC. 50. All courts and others concerned in the execution of last wills, shall have due regard to the direction of the will, and the true intents and meaning of the testator, in all matters brought before them.

SEC. 51. If the probate court shall be satisfactorily informed that any person has in his possession the will of any testator, and refuses to produce the same for probate, such court shall have power to summon such person, and compel him by attachment to produce the same.

SEC. 52. This act shall take effect and be in force from and after the first day of May next.

AN ACT ESTABLISHING A COMMON SCHOOL SYSTEM FOR THE TERRITORY OF WASHINGTON.

CHAPTER I.

SCHOOL FUND.

SEC. 1. School fund, how provided.
2. Each board of county commissioners shall levy taxes for school purposes; appropriation thereof.
3. All fines and forfeitures to be applied to school purposes.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the principal of all moneys accruing to this territory from the sale of any land heretofore given, or which may hereafter be given by the congress of the United States for school purposes, shall constitute an irreducible fund; the interest accruing from which shall be annually divided among all the school districts in the territory, proportionally to the number of children or youth in each between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

SEC. 2. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county to lay an annual tax of two mills on a dollar, on all taxable property of the county, as shown by the assessment rolls made by the county assessors for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect the said tax in the same manner as the other county tax is collected ; and the said money so collected shall be paid over to the county treasurer, to be appropriated for the hire of school teachers in the several school districts, to be drawn in the manner hereinafter prescribed.

Sec. 3. For the further support of common schools, there shall be set apart by the county treasurer, all money paid into the county treasury, arising from all fines for a breach of any penal laws of this territory. Such moneys shall be paid into the county treasury, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

CHAPTER II.

COUNTY SUPERINTENDENTS.

Sec. 1. Provisions for the election of county superintendents.
2. Superintendent to qualify and take an oath.
3. Suderintendent to divide his county into districts, keep a map and lay off new districts.
4. Notice of the formation of a district, and proceedings thereon.
5. Examination of teachers; certificates to be given.
6. Superintendent to visit schools yearly; his duties as visitor.
7. Annual report of superintendent.
8. Annual apportionment of school fund to be made, and notice thereof to be given.
9. Distribution of school fund, how made.
10. Superintendent to collect fines, take care of lands, &c.
11. Trespass on school lands indictable; punishment therefor.
12. Compensation of superintendent.

Sec. 1. There shall be elected by the legal voters of the respective counties, at the annual elections, a county superintendent of common schools for each county, who shall hold his office for the term of three years, and until his successor is duly qualified.

Sec. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath faithfully to discharge the duties of his office, and to the best of his ability promote the interest of education within his county ; which oath shall be in writing and placed on file in the county clerk's office.

Sec. 3. It shall be the duty of the superintendent to divide such portion of his county as shall be inhabited, into convenient school districts ; to define the boundaries and numbers ; and to prepare and keep in his office a map of the districts of the county upon which the lines and boundaries of each district shall be clearly defined; he shall lay off new districts, or divide old ones when the public good shall require it.

SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice in writing of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district, who shall have asked for the formation of the same. It shall be the duty of said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district of the time and place of the first district meeting, which time and place he shall fix by written notices, and which shall be posted up in three public places in the district, at least ten days previous to the time of meeting. In case the inhabitants fail to attend in sufficient numbers to do business as hereafter directed, notice may be renewed at such times as may be thought proper.

SEC. 5. It shall be the duty of the superintendent to examine all persons who wish to become teachers in his county; he shall examine them in orthography, reading, writing, arithmetic, English grammar and geography; and if he be of the opinion that the person examined is competent to teach said branches, and that he or she is of good moral character, he shall give such person a certificate, certifying that he or she is qualified to teach a common school in said county; such certificate shall be for the term of one year only, and may be revoked sooner by the superintendent for good cause.

SEC. 6. The superintendent shall visit all the schools taught in his county by a qualified teacher, at least once a year; he shall give such information and encouragement as he may think necessary, and endeavor to promote the introduction of a good and uniform system of school books throughout the county.

SEC. 7. It shall be the duty of the superintendent to receive the district reports hereinafter provided for, and keep them on file in his office; and he shall at least ten days before the first Friday in November of each year, make out from the district reports, a statement of the number of the scholars in the county; the number of school libraries; the number of school houses; the number of districts; in how many districts a school has been kept in the past year; what school books are principally used; what proportion of all the scholars in the county have attended school for the past year, and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may, if convenient, publish it in some newspaper in this territory.

SEC. 8. It shall be the duty of the superintendent, at least fifteen days before the first Friday in November of each year, to make an apportionment of the school fund in the county treasury among the several school districts in their respective counties, in proportion to the number of persons in the district over the age of four, and under twenty-one years, and certify the amount due to each district, which shall be drawn as hereafter directed; and he shall forthwith notify the clerks of the school districts of the amount due their respective districts.

SEC. 9. When the districts shall have complied with the law, as hereafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the clerks of the districts, for the amount of the school funds appropriated to each; on the presentation of which order, the treasurer of the county shall pay over to the clerks of the districts all moneys due the respective districts, and the clerks shall endorse on said order a receipt for so much as shall be paid thereon, and they shall also sign a duplicate receipt, which shall be deposited with the superintendent, who shall credit the treasury of the county therewith, and charge the same to the proper district.

SEC. 10. The superintendent shall, in the name of the county, collect, or cause to be collected, all moneys due the school fund from fines, or from any other source in his county; and until the legislature shall make some provision for the disposal of the school lands given by congress to the territory for school purposes, it shall be the duty of the superintendent to preserve said lands from injury and trespass; and when it shall come to his knowledge that any trespass has been committed on such lands, he shall make complaint of the same before the grand jury of the proper county, at the first regular term of court after he has obtained a knowledge of such trespass; and all fines and other moneys thus collected shall be paid over to the treasurer of the county for the use of common schools, and divided in said county in the same manner as other school funds.

SEC. 11. Any person trespassing upon or injuring the school lands, as mentioned in the preceding section, shall be liable to be indicted for the same, and upon conviction, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars.

SEC. 12. The said superintendent shall be allowed out of the county treasury, in compensation for his services, the sum of twenty-five dollars a year. The county commissioners may, in their discretion, if they think the services rendered demand it, increase his salary to any sum not exceeding five hundred dollars a year.

CHAPTER III.

SCHOOL MEETINGS.

Sec. 1. School meetings may be called; a quorum.
2. Powers of such meeting.
3. Organization of school meetings, and proceedings therein.
4. Term of office of directors.
5. Director to qualify and take an oath.
Oath to be filed.
6. Duties of the directors in each district.
7. Two directors a quorum.
8. Further duties of the directors.

CLERKS.

9. Election of clerks.
10. Duties of clerks.
11. Annual report of clerk.
What it shall contain.
12. Accounts to be kept by clerk.
To pay over funds to successor.
13. Annual school meetings to be held.
Notice thereof to be given.
14. Qualification of voters at school meeting.
15. Adjournments of meeting may be made.
16. Power of school meeting to levy taxes; library.
17. Notice of taxes to be levied, must be given in notices calling the meeting.
18. Organized district a body corporate; duties of directors.
19. How taxes may be assessed by directors.

TEACHERS.

20. Teachers to procure certificates, keep and file a register, &c.

Sec. 1. A school meeting may be called at any time for the purpose of organizing a new district, as provided in section four, under the title of county superintendent. No number less than five legal voters shall constitute a quorum, to do business in any district meeting.

Sec. 2. Such school meeting shall have power to do all necessary business the same as the regular annual school meeting would have.

Sec. 3. Such meeting when assembled, shall organize by the appointment of a chairman and secretary. It shall then proceed by ballot to elect three directors. Of those so elected, the person having the highest number of votes, shall hold his office for the term of three years, and the person having the next highest number, shall hold his office for two years, and the person next highest one year, and each shall continue in office until his successor is elected and qualified. In case two or more persons of those so elected, receive an equal number of votes, the duration of their term of office shall be determined by lot, in presence of the chairman and secretary.

Sec. 4. The term of office of a director not elected at the regular annual meeting, shall continue for the term of one, two or three years, as he may have been elected, from the next annual school meeting, unless such director shall be elected to fill vacancy, in which case he shall continue in office for the unexpired term. So that at every annual school meeting after the first, there shall be elected one school director for the term of three years.

SEC. 5. The directors shall qualify within ten days after their election, by taking an oath or affirmation faithfully to discharge the duties of the office, to the best of their abilities; and to promote the interest of education within their district. This oath shall be in writing and filed with the clerk of the district.

SEC. 6. It shall be the duty of the directors of every school district:

1st. To call special meetings of the district whenever they shall deem it necessary;

2d. To make out a tax list of every district tax, containing the names of the taxable inhabitants in the district, and the amount of tax payable by each inhabitant set opposite his name;

3d. To annex to such tax list a warrant directed to the clerk of the district for the collection of the sums in such list mentioned, including five per cent. for the fees of said clerk;

4th. To purchase or lease a site for the district school house as designated by a meeting of the district, and to build, hire or purchase, keep in repair and furnish such school house with necessary fuel and appendages out of the funds collected and paid to the clerk for such purpose, and to have the custody and safe keeping of the district school house;

5th. To contract with and employ teachers: *Provided*, That no teacher shall be employed, who shall not produce a certificate from the county superintendent as is required by law, of good moral character, and qualification to teach a district school;

6th. To give orders to the teachers on the district clerk for their wages.

SEC. 7. Any two of said directors shall constitute a quorum to do business.

SEC. 8. It shall be the duty of the directors to visit and examine the school or schools of their respective districts, at least twice in each term; they shall endeavor to procure the introduction of a good and uniform system of school books in their district; and when the teacher experiences difficulty in the government of the school, it shall be his duty to refer the cases of disorderly scholars to the directors, who shall decide how such scholars shall be punished, or whether they shall be dismissed from school.

CLERKS.

SEC. 9. The first annual school meeting shall also elect a district clerk, who shall continue in office for the term of three years. He shall qualify within ten days after his election, by giving bond to the district directors in such sum as they may require; that he shall well and truly perform the duties of his office, and pay over all moneys coming into his hands by virtue of his office, as by law directed. If a clerk be elected to fill a vacancy, he shall continue in office for the unexpired term; and if elected at the first meeting, not being the regular annual meeting, he shall continue in office three years from the next annual meeting.

SEC. 10. It shall be duty of the clerk of each district:

1st. To record the proceedings of his district in a book, to be provided for that purpose by the district;

2d. To give notice of annual or special meetings;

3d. To procure a list of all persons in the district between the ages of four and twenty-one years;

4th. To collect all district taxes which he shall be required by the warrant from the directors to collect within the time limited in each warrant for its return; and he shall have the same authority to enforce the collection of such tax as the county collector has for collecting the county tax, and he shall be allowed five per cent. for collecting;

5th. To retain a copy of all reports made to the county superintendent relating to the affairs of the district.

SEC. 11. It shall be the duty of the clerk to furnish the county superintendent at least twenty days before the first Friday in November of each year, a report containing the number of scholars in his district, over four and under twenty one years of age; how long a school has been kept in his district the past year; what school books are principally used; what proportion of the scholars in the district have attended school; and the amount of money paid to teachers.

SEC. 12. The clerk of each district shall, at the close of each year of his office, make out in writing a just and true account of all moneys received by him for the use of the district, and the manner in which the same shall have been expended, which account shall be read at the annual district meeting. The clerk shall pay over all moneys remaining in his hands belonging to the district, to his successor, when his successor has legally qualified, and upon a refusal or neglect so to do, the directors shall forthwith bring suit upon his bond.

SEC. 13. There shall be an annual school meeting held in each district upon the first Friday in November; and notices of all annual or special meetings shall be in writing, signed by the directors or the clerk of the district, and shall state the object for which the meeting is called; and shall be posted up in three public places in the district, at least six days previous to the holding of such meeting.

SEC. 14. Every inhabitant over the age of twenty-one years, who shall have resided in any school district for three months immediately preceding any district meeting, and who shall have paid, or be liable to pay any tax except road tax in said district, shall be a legal voter at any school meeting, and no other person shall be allowed to vote.

Sec. 15. Any school meeting shall have power to adjourn from time to time, as occasion may require.

Sec. 16. A school meeting legally called, shall have power by the vote of a majority present, to levy a tax on all the taxable property in the district, as the meeting shall deem sufficient to purchase, or lease a suitable site for a school house, and to build, hire or purchase a school house and keep it in repair, and to furnish the same with necessary fuel and appendages, and to levy an additional tax on the district, for the purchase or increase of a district library, globes, maps and such apparatus as the interest and well being of the school shall require. The library shall consist of such books as the district meeting shall direct.

Sec. 17. In all cases when a tax is to be levied, it shall be stated in the notices given of the meeting, for what purpose or purposes a tax is to be levied.

Sec. 18. When a district is organized, it shall be to all intents and purposes a body corporate, capable of suing and being sued, and fully competent to transact all business appertaining to schools or school houses in their own district; and it shall be the duty of the directors to prosecute or defend any demands for or against their district, and notice shall be served upon one of the directors of any suit brought against a district.

Sec. 19. All district taxes shall be assessed by the directors according to the valuation of property made for the assessment of county taxes, and shall be collected by the clerk of the district, with an addition of five per cent. on the same, which the clerk shall receive for his services. Any person aggrieved by an excessive assessment of the directors of any school district, may have the same reduced by his own affidavit or any competent testimony, to the satisfaction of the clerk.

TEACHERS.

Sec. 20. It shall be the duty of every teacher of a common school, to procure a certificate of qualification and good moral character, before entering on the duties of a teacher. It shall be his duty to keep a register of the names of the children attending school, their age, the time when they begin, the time they continue, and of their daily attendance, which register shall be filed with the clerk of the district at the close of every term.

CHAPTER IV.

MISCELLANEOUS PROVISIONS.

SEC. 1. Minutes of the first meeting, how kept.
2. Who to be chairman and secretary of each meeting.
3. Meetings may alter repeal or modify their proceedings.
4. Power of meeting to levy tax.
5. Districts failing to organize, debarred the use of the funds; proviso.
6. Funds to be apportioned to organize districts only.
7. When a district shall be allowed to draw the county school fund.
8. When county superintendent shall issue an order for the funds of a district to the clerk thereof.
9. Districts failing to comply with the law to forfeit their claim to the fund.
10. When a school shall be free.
11. Directors may permit scholars now resident to attend.
12. Holding other office not to disqualify superintendent, director or clerk.
13. Librarian may be appointed.

SEC. 1. The minutes of the first school meeting shall be signed by the chairman and secretary, and delivered to the clerk of the district, who shall file the same in his office.

SEC. 2. In all school meetings, the directors whose term of office shall first expire, shall act as chairman, and the clerk of the district shall act as secretary.

SEC. 3. Districts shall have power to repeal, alter or modify their proceedings from time to time, as occasion may require.

SEC. 4. District meetings legally called, shall have power to levy a tax upon the property of the district for any purpose whatever, connected with, and for the benefit of schools, and the promotion of education in the district.

SEC. 5. Any new district failing to organize and report to the county superintendent, the number of children over four and under twenty-one years of age in said district, at least twenty days before the first Friday in November, or any district having been organized for the term of one year or more, failing to report to the county superintendent, as is required in section eleven, of the chapter entitled "school meetings," in this act, shall not be entitled to any portion of the county school fund for the year: *Provided*, That if the clerk of any school district shall fail to make such report, any inhabitant of such district may make such report verified on oath, and the county superintendent shall receive it, the same as if made by the clerk.

SEC. 6. The county superintendent shall apportion all the county school fund for that year among those districts only which have organized and reported according to law.

SEC. 7. No district shall be allowed to draw the county school fund from the treasury, apportioned to it, until it shall raise an amount by tax or otherwise in said district to be expended in paying teachers and building school houses in said district, equal to the amount to which such district is entitled out of the county school fund; nor until it shall satisfy the county superintendent, that a school has been kept in said district by a qualified teacher, for at least three months during the year immediately following the apportionment.

SEC. 8. When the clerk of any district shall satisfy the county superintendent, that an amount has been raised by tax or otherwise in his district, for the support of teachers, equal to the amount apportioned to them from the county fund, and that a school has actually been kept by a qualified teacher as provided in the preceding section, the superintendent shall then issue an order on the county treasury in favor of the clerk of said district, for the amount to which such district is entitled, out of the county school fund.

SEC. 9. Any district failing to comply with the provisions of the two preceding sections for the term of one year after any apportionment, shall forfeit its apportionment, and the amount thereof, shall be again added to the county school fund, and divided again among all the districts.

SEC. 10. Whenever a school is kept in any district, the teacher of which shall be supported out of the general county school fund, or by tax on the district as aforesaid, such school shall be open and free to all children between the ages of four and twenty-one years, in such district.

SEC. 11. The directors of any district may permit scholars living out of the district, to attend school, with or without charge, as they may deem proper.

SEC. 12. No person shall be disqualified to hold the office of county superintendent, district director or clerk, on account of holding any other office within the territory at the same time.

SEC. 13. It shall be the duty of the directors to appoint a suitable person for librarian, when the district shall have procured a library.

Passed April 12, 1854.

AN ACT IN RELATION TO COUNTIES.

SEC. 1. The counties in this territory to be bodies corporate, for certain purposes.
2. The conveyances for the use of the county to have the same effect as if made to the county.
2. Provisions for the change of the limits of counties.
4. When counties are divided, the property thereof to be equally divided.
5. Debts to be apportioned in the manner prescribed in the preceding section.
6. Actions against counties to be brought in the district court.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the several counties in this territory shall have capacity as bodies corporate, to sue and be sued in the manner prescribed by law; to purchase and hold lands within its own limits; to make such contracts and to purchase and hold such personal property as may be necessary to its corporate or administrative powers, and to do all other necessary acts in relation to all the property of the county.

SEC. 2. Every conveyance of lands or transfer of other property made in any manner for the use of such county, shall have the same force and effect as if made to said county in its proper and corporate name.

SEC. 3. When a county seized of lands shall be divided into two or more counties, or shall be altered in its limits by the annexing of a part of its territory to another county or counties, such county shall become seized to its own use of such part of said lands as shall be included within its limits, as settled by such division or alteration.

SEC. 4. When a county possessed of, or entitled to money, rights and credits, or other personal property, is so divided or altered, such property shall be apportioned between the counties interested therein, by the board of county commissioners and treasurer thereof, as to them, or a majority of them, shall appear to be just and equitable. They shall meet for that purpose at such time as shall be prescribed by the law making such division or alteration.

SEC. 5. Debts owing by a county so divided or altered, shall be apportioned in the manner prescribed in the preceding section, and each county shall thereafter be charged therewith, according to such apportionment.

SEC. 6. All actions against any county may be commenced in the district court of such county, or of the adjoining county, and all actions by any county shall be commenced in the district court of the county in which the defendant resides, or in the county adjoining the county by which such action is commenced.

AN ACT SUPPLEMENTARY TO AN ACT, ENTITLED "AN ACT RELATIVE TO COUNTIES," AND TO REPEAL CERTAIN PORTIONS THEREOF.

SEC. 1. New counties to be liable for their proportion of the debts, and receive their proportion of the property.

2. The auditors of the two counties to meet and settle, and apportion the debts.

SEC. 3. In case of disagreement, an umpire to be chosen.
4. Liquidation of the debt, how made.
5. Repealing clause.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That whenever a new county shall be, or shall have been organized over territory which shall have been included within the limits of any other county or counties, the new county shall be liable for a reasonable proportion of the debts of the county from which it was taken, and entitled to its proportion of the property of the county.

SEC. 2. The auditor of the old county shall give the auditor of the new county reasonable notice to meet him on a certain day at the county seat of the old county, or at some other convenient place, to settle upon and fix the amount which the new county shall pay. In doing so they shall not charge either county with any share of debts arising from the erection of public buildings, or out of the construction of roads or bridges, which shall be and remain, after the division, within the limits of the other county. And of the other debts they shall apportion to each county such a share of the indebtedness as may be just and equitable, taking into consideration the population of such portions of territory so forming a part of the said counties while so united, and also the relative advantages derived from the old county organization.

SEC. 3. In case the two auditors cannot agree, they shall call a third person, not a citizen of either county or in any other manner interested, whose decision shall be binding. In case they cannot agree upon such third person, they shall each name one and decide by lot which it shall be.

SEC. 4. The auditor of the county indebted upon such decision, shall give to the auditor of the other county his order upon the treasurer for the amount to be paid out of the proper fund as in other cases, and also make out a transfer of such property as shall be assigned to either county.

SEC. 5. All portions of the act to which this is supplemental are hereby repealed.

Passed April 24, 1854.

AN ACT TO PROVIDE FOR THE ASSESSING AND COLLECTING COUNTY AND TERRITORIAL REVENUE.

SEC. 1. What property to be taxed.
Poll tax.
Amount of tax.
2. Property exempt from taxation.
3. Assessment of tax on lands, how made.

SEC. 4. All personal property to be taxed.
"Personal property" defined.
5. Property of foreigners, or foreign companies, to be taxed.
6. Assessor to prepare an assessment roll.
7. Improvements on claims deemed personal property.
8. Assessor may require a list of taxable property from the owner under oath.
9. Each assessor to deliver his roll, after correction, to the county commissioners.
10. Examination of assessment roll by county commissioners.
11. The county auditor to furnish the territorial auditor a copy of the assessment roll, under seal.
12. Duty of the territorial auditor upon receipt of assessment roll.
13. A duplicate assesment roll to be furnished the county treasurer. Proviso.
14. Of the payment of taxes.
15. Proceedings to collect delinquent taxes.
16. Duty of the sheriff touching the sale of property for taxes.
17. Return of sheriff to the county treasurer and auditor, and settlement with auditor.
18. Delinquent taxes to draw interest.
19. Provisions for the sale of property for taxes.
20. Lands which cannot be sold, to be bought by the county.
21. County treasurer to make a certificate of the sale of such property within forty-eight hours after sale.
22. List of county lands to be kept and offered for sale.
23. Of the redemption of property sold for taxes.
24. County lands may be redeemed.
25. How delinquents may pay their taxes.
26. Of errors and omissions, how corrected.
27. Disposition of moneys collected as territorial tax.
Taxes, now due, to be collected under laws in force.
First Monday of July, 1854, instead of first Monday in June.
28. Settlement of the county treasurer.
29. Proceedings when officer fails to pay over money, as required by law.
30. Wrongful sale of lands illegal; remedy therefor.
31. Additional fees may be allowed by the commissioners.
32. Entries of the treasurer to be prima facie evidence.
33. County to be responsible for school funds.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington*, That all taxes for the support of the government of this territory, on polls of white male inhabitants, between twenty-one and fifty years of age, and on property valued in equal and rateable proportion, to be fixed trom time to time by law, and for county expenditures, to be determined by the county commissioners; and the amount of poll tax by this act, shall be one dollar, upon every white male inhabitant over twenty-one years of age, in this territory, which shall go to the county. There shall also be levied a tax of one mill upon every dollars worth of real and personal property in this territory, for territorial purposes, and two mills for school purposes, and not to exceed four mills for county purposes.

SEC. 2. All real and personal property belonging to any religious society, or to any benevolent, charitable, literary, or scientific institution, or invested for the use of the same, or held by trustees, all real and personal property belonging to this territory, or any county thereof, all school houses and school lands, public libraries, and all places of burial, the property of all indians, shall be exempt from taxation.

SEC. 3. All lands liable to taxation, shall be assessed in the county in which the same may be, in the name of the owner or occupant thereof, and all unoccupied lands, where the name of the owner is unknown, shall be assessed as lands of persons unknown.

SEC. 4. All persons shall be taxed for their own personal property, and for all personal property under their control, liable to be taxed, in the county where they may reside, and for all moneys loaned at interest; and and the term "personal property" shall include all household furniture, goods, chattels, moneys, and gold dust, on hand or on deposit within this territory, all boats and vessels, whether at home or abroad, and all capital invested therein, all debts due, exceeding indebtedness, or to become due from solvent debtors, whether on account, contract, note, mortgage, or otherwise; all public stocks, or shares in all all incorporated companies, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

SEC. 5. Personal property belonging to any foreigner, or foreign incorporated company, not in bonds or transitu, shall be taxed in the county in which it is situated, and the persons having control of the same shall be liable for the tax.

SEC. 6. The assessor of each county, between the first Monday of March and the last Monday of May, shall ascertain the names of all persons in such county liable to taxation, and also all taxable property therein, and shall prepare an assessment roll, in which shall be set down, in separate columns,

1st. The names of taxable persons in such county.

2d. A concise description of all real estate taxable to each.

3d. The full cash value thereof.

4th. The value of the personal property taxable to each.

5th. The description of a city or town lots taxable to each, and their value.

6th. The total value.

And when any person is assessed as trustee, guardian, executor, or administrator, a designation of his representative character shall be added to his name, and such assessment shall be entered in a separate column from his individual assessment.

SEC. 7. When any person shall be occupying and claiming any lands, by virtue of the law of the United States granting lands to actual settlers thereon, the improvements shall be valued as part of the personal property of such person.

SEC. 8. Any assessor may require any person liable to taxation in his county, to furnish a list of his real estate, city and town lots, liable to taxation in the county, and a list of personal property liable to taxation, and may require such person to make oath that such list contains a full and true account of all his property, liable to be taxed in the county; and if any person refuse to furnish such list, or to swear to the same, when required so to do by the assessor, the assessor shall ascertain the taxable property of any such person, from the best information to be derived from other sources, and shall enter such refusal to furnish a list, or to swear or affirm, upon his roll.

SEC. 9. Every assessor, after the correction of all errors in the assessment roll, according to the provisions of the act relating to county assessors, shall deliver the corrected assessment roll to the board of county commissioners, on or before their annual session in June.

SEC. 10. The county commissioners of such county shall, at their session in June, examine the assessment roll of their county, and shall have power to make all alterations and corrections in such roll, as they shall deem necessary to make the same conform to the requirements of this act, and shall also determine the amount of money to be raised in their county for county purposes, and apportion such amount, together with the territorial tax and the school tax, required by law to be apportioned on the valuation of taxable property in their county for the year, and levy a tax therefor, and cause such orders to be entered at large upon their records.

SEC. 11. Within thirty days after the assessment roll of any county has been examined, corrected, and approved, by the board of county commissioners, the county auditor shall transmit to the territorial auditor, a certified copy thereof, under the seal of the board.

SEC. 12. It shall be the duty of the territorial auditor, on receiving such copies of the assessment rolls, to estimate the amount of tax to be collected in each county for territorial purposes, and make a statement thereof, and carefully preserve the same in his office; and he shall also deliver a certified copy of such statement to the territorial treasurer, who shall record the same in a book kept for that purpose, and the territorial treasurer shall also charge the respective counties with the amount of tax so ascertained to be raised in each.

SEC. 13. The county auditor shall, within fifteen days after the adjournment of the June session of the board of county commissioners, estimate the amount of taxes due on the valuation of property in his county, and shall make out a duplicate assessment roll, which shall contain, in addition thereto, columns showing the amount of the territorial, school, and county tax, and total amount of each column of valuation, and shall deliver a copy of such roll to the county treasurer, and charge such treasurer with the amount of such taxes: *Provided,* That when any person shall be returned on the assessment roll as having refused to furnish a list, or to swear to such list when required by the assessor, the county auditor shall add fifty per cent to the valuation of the property of such person, and estimate the amount of his tax thereon.

SEC. 14. All persons liable to taxation may, before the first day of September, in each year, pay their taxes to the county treasurer. County orders shall be received in payment of county taxes, to an amount not exceeding such tax. Such county treasurer shall give a receipt for the payment of taxes, if required, therein describing the lands or town lots, or specifying the amount of personal property on which the same is paid, and shall note on his roll the payment thereof, and shall be entitled to retain three per cent. upon all taxes so paid as his fees.

SEC. 15. The county treasurer shall, within ten days after the expiration of the time allowed for the payment of taxes, make out a schedule of unpaid taxes, in form of duplicate assessment roll, verified by affidavit, and deliver the same to the county auditor, who shall add ten per cent. to the amount of such unpaid taxes, and forthwith issue a transcript of such schedule, with the ten per cent. added to such taxes, with a warrant attached thereto, in the name of the United States, under his hand and the seal of the board of county commissioners, to the sheriff of the county, commanding him to collect the taxes charged in such transcript, by demanding payment of the persons chargeable therein, and making sale of the goods and chattels of such persons, if necessary, and to return the same to such auditor on or before the first Monday in January, next ensuing thereafter; and such auditor shall charge such sheriff with the amount of money to be collected in such transcript.

SEC. 16. The sheriff shall proceed to call once on each person named in the transcript, and collect the taxes charged, as provided in this act, and if not then paid, shall levy the same on the goods and chattels of such person, and give six day's notice of the time and place of sale, and the property to be sold, by posting up advertisements in four public places in the county, and sell the same at public auction; and if such property shall sell for more than the taxes, cost, and damages, the surplus shall be paid to the owner thereof, and such sheriff shall receive the ten per cent. added to the tax by the county auditor, for fees of collection, and in case of sale, his usual fees for sales of property on executions: *Provided,* That any person, before sale of his property, may pay all taxes, per centage, and costs, and stop such sale.

SEC. 17. The sheriff shall pay to the county treasurer the amount of money collected by him from time to time, as often as once in three months, and before the return day of such transcript, and shall take his receipt therefor, and shall return to the auditor, with his transcript and warrant, on or before the first Monday in January, next ensuing, a delinquent list of all taxes remaining unpaid, setting down such as are due and unpaid on lands, or city or town lots, with a proper description thereof, and such as are due and unpaid by any person on personal property, or as poll tax, verified by affidavit, and shall, on settlement with such auditor, be allowed the amount of receipts given to him by the county treasurer, and the amount of taxes returned by him delinquent to such auditor, and the ten per cent. allowed him by law for collection.

Sec. 18. From the date of the sheriff's returns, all taxes unpaid are delinquent, and draw interest at the rate of twenty-five per cent. per annum; and taxes on lands, city or town lots, are hereby made a perpetual lien thereupon, against all persons, except the Uunited States and this territory.

Sec. 19. The county auditor shall, within twenty days, make out two lists of such lands, city and town lots, returned as delinquent, with the amount of taxes due thereon, and deliver one list to the county sheriff, who shall advertise such list in some newspaper in the county, or if there be no such newspaper in the county, then in some newspaper of general circulation in the territory, for six weeks successively, before the 1st Monday in May, and shall also post such list in six public places in his county, for six weeks before such first Monday in May, and shall proceed to sell, at public auction, to the highest bidder, on the first Monday of May, between the hours of ten o'clock A. M., and five o'clock P. M., at the county seat, all delinquent lands, and city and town lots, the unpaid tax on which, and accruing interest and costs, shall not have been paid before such time, and shall continue such sale from day to day, until all such lands and town lots shall be sold, or shall have been twice offered for sale; and the sheriff shall receive five per cent. on all such sales, as his fees therefor.

Sec. 20. When any lands or town lots cannot be sold for the amount of taxes, interest, and charges thereon, such lands and town lots shall be passed over, and re-offered for sale before the close of such sale; and if the same cannot be then sold for the amount, such lands and town lots shall be purchased by the county treasurer, for the amount due thereon, as county property.

Sec. 21. The county treasurer shall, on the payment to him, within forty-eight hours, of the amount bid on any land, city or town lot, make out a certificate of purchase of such land or lot, in the name of the territory of Washington, signed by such treasurer in his official name, to such purchaser, which shall be held to convey all right, title, and interest of the person in whose name such land or town lot shall have been taxed, except as hereinafter provided; and where such payment shall not be made within forty-eight hours, such lands and town lots shall be considered as sold to the county. The county treasurer shall be entitled to a fee of one dollar for every such certificate of purchase, and any number of tracts of land or lots may be included in such certificate, if required by the purchaser, and a fee of ten cents for each additional tract or lot so included, shall be allowed such treasurer.

Sec. 22. The county treasurer shall, within ten days after such first Monday in May, make out a list of all lands and town lots sold to the county, verified by affidavit; and the county auditor shall enter the same as county lands, city and town lots, in a book to be kept for that purpose, and taxes shall be regularly assessed thereon, and such lands, and city and town lots, shall be included in the delinquent list furnished every year, and with the amount of such year's tax added to the delinquent tax, and interest and charges thereon, be offered for sale as other delinquent lands, until sold for the amount of such delinquent tax, interest, all charges and accrued taxes.

Sec. 23. All lands, city, and town lots, sold to actual purchasers, shall be subject to redemption by the former owner thereof, within two years thereafter, on the payment of the delinquent taxes, with fifty per cent. interest, cost, charges, and the accruing tax, to the purchaser, who shall receipt therefor, or to the county treasurer, for the use of such purchaser, and if no receipt of such purchaser shall be filed with such treasurer, or no such payment be made to him, the holder of the certificate of purchase shall be entitled to receive a deed from the county treasurer, of the land, city, or town lots described in such certificate of purchase, which deed shall run in the name of the territory of Washington, and be signed by such treasurer in his official capacity, and shall be presumptive evidence of the regularity of all former proceedings; and the treasurer shall be entitled to receive a fee of two dollars for every such deed.

Sec. 24. Lands, and city and town lots, sold to the county, may be redeemed by the former owner thereof, by such owner obtaining from the county auditor a certified statement of the amount of all taxes, interest, and costs accrued, charged to such lands or lots, and paying such amount to the county treasury, who shall give him a receipt therefor, and the county auditor, on filing such receipt, shall give to such owner a certificate of redemption of such land, city or town lots, signed by him in his official capacity, and sealed with the seal of the board of county commissioners, and shall charge such treasurer with the amount of such receipt, and shall omit such land, city or town lots, so redeemed, from his list of county lands.

Sec. 25. Any person whose poll tax, or tax on personal property, shall have been returned delinquent, may pay the same at any time, by taking from the county auditor a certified statement of the amount of such taxes, interest, and costs, and paying such amount to the county treasurer, who shall give him two receipts therefor, one of which he shall file with the county auditor, who shall charge such treasurer with the amount thereof, and if such taxes, interest, and costs shall not be paid before the time of making out the duplicate assessment roll, the county auditor shall add to the tax assessed and charged against such person, on such roll, the amount of such delinquent tax, interest, and costs, to be collected as other taxes.

SEC. 26. If on the assessment rolls or tax lists, schedule or transcripts, there shall be any error in the name of a person taxed, the name may be changed, and the tax collected from the person intended, if he be taxable, and can be identified by the assessor, treasurer, or sheriff; and whenever the treasurer, after the duplicate certificate is delivered to him, shall ascertain that any land or other property is omitted, he shall assess and estimate the tax thereon, and enter the same upon his duplicate assessment roll, and inform the county auditor thereof, who shall charge him with the amount of such tax. If the sheriff, after he has received the transcript of the schedule of unpaid taxes, shall ascertain such omission, he shall assess and estimate such tax, and enter the same upon his transcript, and proceed to collect it, and inform the county auditor thereof, who shall charge him with the amount of such tax.

SEC. 27. The treasurer shall hold all the moneys collected as territorial tax, on the first day of September, January, and June, subject to the orders of the territorial treasurer, who, on receiving such moneys, shall file a receipt therefor with the territorial auditor, and transmit a receipt to the county treasurer; and such county treasurer, on his settlement with the territorial auditor, shall be allowed the amount shown by such receipts to have been paid by him to the territorial treasurer, and the amount of territorial tax shown to be unpaid by the certified statement of the county auditor, signed by him, and sealed with the seal of the board of county commissioners. All taxes assessed, and now due or delinquent, shall be collected under the laws now in force; and the boards of county commissioners shall hold their first session under the provisions of this act, on the first Monday in July, 1854, instead of the first Monday in June in such year, as herein provided.

And the county assessor shall, for the year 1854, prepare his assessment roll without receiving a blank therefor, before the first Monday in July, and deliver the same to the board of county commissioners at their July session, which July session of such board shall be for the purposes of this act, the June term thereof.

SEC. 28. The county treasurer, at the June term of the board of county commissioners, shall attend with his books and vouchers and settle his accounts before such board, and shall be allowed in such settlement the amount of the orders of the territorial treasurer, all county orders, and interest paid thereon, receipts of county auditor, and amount of the delinquent tax returned by the sheriff on polls and personal property, and the amount of taxes due on lands, and city and town lots, returned by such treasurer to the county auditor, as lands, city and town lots sold to the county, at the annual sale thereof, with the per centage allowed to be returned by him by law.

SEC. 29. If any county treasurer or sheriff shall neglect to pay over any money, at the time required by law, the amount of money then due and unpaid shall draw twenty-five per cent. interest per annum therefrom, and it shall be the duty of the officer to whom such payment should have been made, to cause the bond of such county treasurer or sheriff to be put in suit, and to inform the prosecuting attorney of the district in which such defaulting treasurer or sheriff may reside, of his failure to pay over such money.

SEC. 30. When by the mistake or wrongful act of any officer, lands, city, or town lots have been sold for taxes, on which no tax was due, such sale shall be illegal, and all deeds and certificates of purchase shall be invalid; and the purchaser of such lands or town lots shall be entitled to recover twice the amount of delinquent taxes, interest, costs and charges, and accrued taxes, paid by him, from such officer, either by suit on his bond or by action against such officer himself, before any tribunal having jurisdiction of the amount.

SEC. 31. In addition to the fees allowed by this act, the board of county commissioners shall allow a reasonable sum for the preparing of rolls, schedules and lists, to officers required by law to prepare the same; and shall also allow the cost of publication of lands, city, and town lots sold to the county.

SEC. 32. The entries made in the county treasurer's book, the assessment rolls, the duplicate assessment rolls, schedules, transcript, or warrants attached thereto, delinquent lists, books and records of the county auditor, required to be kept by him by this act, shall be prima facie evidence in all judicial proceedings.

SEC. 33. The county shall in all cases be responsible to the several school districts in the county, for all delinquent county school tax; and it shall be the duty of the county treasurer to pay, on the order of the superintendent of common schools of his county, to the several school districts, the entire amount of the county school tax levied in the county for that year, out of any money in the county treasury, whether said school tax, or any part thereof, be collected or not.

AN ACT TO INCREASE COUNTY REVENUE.

SEC. 1. Power of the county commissioners to require license for selling goods, trading, &c., &c.
2. Sea-going crafts exempt from the force of this act.
3. Fine for violation of this act.
4. Commissioners shall fix the rates of license.
5. Fine and punishment for selling liquor without license.
6. To whom license may be granted.
7. License to be obtained for keeping bowling alleys, or billiard tables.
8. Amount of license for keeping bowling alleys.
9. Amount of license for keeping billiard tables.
10. Fines and forfeitures under this act, how collected.
11. Fine for keeping billiard table or bowling alley without license.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the board of county commissioners of each and every county shall have power to prohibit all persons from selling goods, wares, or merchandise of any kind at auction or public out-cry, from trading boats, wagons, carts, or vehicles of any kind, of any goods, wares, or merchandise, without first obtaining a license therefor.

SEC. 2. Nothing in this act shall be so construed as to apply to any sea-going craft, or boats landing goods from the same.

SEC. 3. If any person shall sell any goods, wares, or merchandise by auction, or from boats, wagons, carts, or vehicles of any kind, as described in section one of this act, in any county where the authorities require such license, he shall forfeit and pay, for the first offense, not less than ten nor more than fifty dollars, for the second offense not less than twenty-five, nor more than one hundred dollars.

SEC. 4. The said commissioners shall have power to license, at such rates as they may deem proper, suitable persons to keep groceries in their respective counties.

SEC. 5. If any person shall sell any intoxicating liquor, in any quantity less than one gallon, without first obtaining a license from the commissioners of the county in which he sells, he shall forfeit and pay to the county, for every offense, not less than fifty dollars, with costs of suit, and shall moreover be liable to indictment, fine and imprisonment; but no person shall remain in prison after the payment of all fines and costs of which he may stand convicted, or in any event, for a longer period than ten days for any one offense.

SEC. 6. The commissioners shall not grant a license to any person unless they believe the applicant to be a man of good moral character, and possessed of sufficient property to be able to pay the probable fines and forfeitures under this act, or shall enter into bonds to the commissioners, with one or more good and sufficient sureties, in the sum of five hundred dollars to be approved by the commissioners or the auditor in vacation, conditioned to pay all fines, forfeitures and costs, that may be found against the applicant under this act.

Sec. 7. No person shall be permitted to keep a billiard table or bowling alley to let for hire, without obtaining a license from the county commissioners of the proper county for that purpose.

Sec. 8. Any person wishing to keep one or more bowling alleys, (provided they are kept in the same room) shall pay into the county treasury the sum of not less than twenty-five or more than one hundred and fifty dollars per annum, and at the same rate for a shorter period: *Provided,* That no license shall be granted for a shorter period than six months. Upon the production of the receipt of the county treasurer by the applicant for the required sum, the county commissioners may grant said applicant a license for a term to which his receipt may entitle him.

Sec. 9. Any person wishing to keep a billiard table or billiard tables, provided all such tables are kept in the same room, shall pay into the county treasury the sum of not less than twenty-five, or more than one hundred and fifty dollars per annum, and at the same rate for a shorter period: *Provided,* That no license shall be granted for a shorter period than six months, and upon the applicant producing to the county commissioners the receipt for the required sum, they may grant said applicant a license for the term to which his receipt may entitle him.

Sec. 10. All fines and forfeitures arising under this act shall be collected by an action at law in the name of the county commissioners of the county where such offense was committed, before any justice of the peace or any court having jurisdiction of the case.

Sec. 11. Any person keeping a billiard table or bowling alley for the purpose of receiving income therefor without first obtaining a license, shall be liable to a fine of fifty dollars for each and every offense.

AN ACT RELATING TO THE CONSTRUCTION AND MAINTAINING OF ROADS.

Sec. 1. All county roads under the supervision of county commissioners.
2. Petitions for altering, vacating, or laying out county roads.
How signed and what they shall specify.
3. Proof to accompany all petitions.
4. Viewers to be appointed.
5. Duties of viewers.
6. Report of viewers to county commmissioners.
Action to be had on said report.

Sec. 7. When and how reviewers may be appointed.
8. Duties of reviewers.
Their report and action to be had thereon.
9. Provision in case of a person conceiving himself aggrieved.
10. When commissioners may cause the damages assessed to be paid, or refuse to establish the road.
11. Appeals to the district court.
12. When commissioners may order a survey.
Surveyor to proceed to the work, and make a return of the survey.
Compensation of surveyor and assistants.
13. Surveyor's return to be recorded.
Width of county roads.
14. Provisions, when place of beginning becomes uncertain.
15. Proceedings upon petition to change or alter a road.
16. Compensation of viewers and reviewers.
Penalty for neglect of duty.
17. Petitioners to give bond before view or review is to be ordered.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all county roads shall be under the supervision of the board of county commissioners of the county wherein the said roads are located, and no county road shall be hereafter established, nor shall any such road be altered or vacated in any county in this territory, except by the authority of the board of county commissioners of the proper county.

Sec. 2. All applications for laying out, altering or vacating county roads, shall be by petition to the board of county commissioners of the proper county, signed by at least twelve householders of the county, residing in the vicinity where said road is to be laid out, altered or vacated, which petition shall specify the place of beginning, the intermediate point, if any, and the place of termination of said road.

Sec. 3. When any petition shall be presented for the action of the said board, for the laying out, alteration, or vacation of any county road, it shall be accompanied by satisfactory proof that notice has been given by advertisement, posted up at the place of holding the county commissioners' court, and also in three public places in the vicinity of the road, or proposed road, thirty days previous to the presentation of said petition to the board, notifying all persons concerned, that application will be made to the said board at their session, for laying out, altering, or vacating such road (as the case may be.)

Sec. 4. Upon the presentation of such petition, and proof that notice has been given as provided in the last section, the board of commissioners shall appoint three disinterested householders of the county, as viewers of said road, and shall issue an order directing said viewers to proceed on a day named in such order, or on their failing to meet on that day, within five days thereafter to view and lay out, alter or vacate such road.

Sec. 5. The viewers appointed, after receiving at least five days' previous notice, from one of the petitioners, shall meet at the time and place specified in the order of the commissioners, or within five days thereafter, and after taking an oath or affirmation before some person authorized to administer oaths, faithfully and impartially to discharge the duties of their appointment, shall forthwith proceed to view the road proposed to be vacated, or to view, select, and mark said road as proposed to be laid out or altered, according to the prayer of the petitioners, or as near the same as in their opinion a good road can be made, at a reasonable expense, taking into consideration the utility, convenience or inconvenience, and all damages which will result to individuals as well as to the public, if such road shall be established or altered.

SEC. 6. The viewers or a majority of them, after having examined or viewed the road proposed to be laid out, altered or vacated, as prescribed in the last section, shall report in writing to the board of commissioners at their next regular session, stating the general face of the country, over which the said road passes, its general necessity, and utility, and whether in their opinion said road should be laid out, altered, or vacated as prayed for by the petitioners ; and if the said viewers, or a majority of them, shall report unfavorably, the said road shall not be laid out, altered or vacated. If such report shall be favorable, it shall be the duty of said commissioners to cause the same to be publicly read, on two different days of the same meeting, and then laid over until their next regular session, and if no application shall be made to them for a review, or alteration of said road, or petition for damages, between the first day of the session at which the report is made, and the second day of their next regular session, the report of the viewers shall be confirmed and adopted.

SEC. 7. When the viewers shall have reported in favor of the prayer of the petitioners, as provided in the preceding section ; it shall be lawful for any householder of the county, at any time before such report shall be confirmed and adopted, to apply to the commissioners for a review of said road, by petition, signed by at least eight householders residing in the vicinity of such road or proposed road, and the commissioners shall, on such petition being presented, and they satisfied that it was just and reasonable, appoint five disinterested householders of the county, to review said road, and shall issue an order to said viewers, directing them to proceed on a day named in such order, or within five days thereafter to review the same and report thereon.

SEC. 8. The viewers so appointed to review such road, or a majority of them, after having received at least five day's previous notice by one of the petitioners for the review, and after taking an oath or affirmation, as prescribed in section five, shall proceed to examine the road or proposed road, viewed by the former viewers, and shall make a report in writing, to the board of commissioners at their next regular session, stating their opinion in favor of or against such road, and their reasons for the same; and if the viewers, or a majority of them, be in favor of laying out, altering, or vacating such road, as recommended by the former viewers, such report shall be adopted and confirmed by the commissioners, at the same session at which it was received; but if such report be against laying out, altering or vacating such road as recommended by the former viewers, no further proceeding shall be had thereon before the commissioners.

SEC. 9. If any person, through whose lands any county road may be viewed and marked out, shall feel that he would be injured by the opening of the same, such person may make complaint thereof in writing, to the board of county commissioners, at any time after the report of the viewers appointed to review said road is received, and before the second day of the next regular session of the commissioners; and if such complaint be made, the commissioners shall appoint three disinterested householders of the county, who shall meet at such times as may be designated by the commissioners, or at such time as may be agreed upon by such householders, and after having been duly sworn or affirmed to discharge their duty faithfully and impartially, shall proceed and view said proposed road, the whole distance through the premises of the complainant, and assess and determine how much less valuable such premises of the complainant would be rendered by the opening of said road, and they shall report the same in writing to the commissioners, at their next regular meeting thereafter.

SEC. 10. If the commissioners be satisfied that the amount of damages so assessed and determined, is just and equitable, and that the proposed road will be of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, they shall order the same to be paid to the complainant out of the county treasury; but if, in their opinion, such proposed road is not of sufficient importance to the public, to cause such damages to be paid by the county, they may refuse to establish the same as a public highway, unless the expenses or damages, or such part thereof as the commissioners may think proper, shall be paid to the petitioners.

SEC. 11. Any complainant, who may conceive himself aggrieved by the assessment of damages, as prescribed by the last two sections, may, within twenty days after such report is adopted by the commissioners, appeal therefrom to the district court of the proper county, such appeal shall be tried in the district court, in the same manner as appeals from justices of the peace, and if the appellant shall fail to recover a judgment more favorable than the report appealed from, he shall pay all costs of the appeal.

SEC. 12. When the report of the viewers appointed to view and lay out, alter or vacate any road, shall be confirmed and adopted, and the damages assessed and determined, if any shall be ordered by the commissioners to be paid, they shall order such road to be laid out, altered or vacated, according to the report of the viewers, and may if they deem it necessary, forthwith issue an order, under the seal of the board of commissioners, to some skillful and competent surveyor, directing him forthwith to survey said road as located and marked by the viewers ; and such surveyor shall take to his assistance two chain-bearers and one marker, and proceed to survey such road and cause the same to be conspicuously marked throughout, noting the corners and distances, and at the end of each mile, shall cause the number of the same, and also the commencement and termination of said road, or survey, to be marked on a tree or monument erected for that purpose ; and he shall make out a correct and certified return of the survey of said road, and a plot of the same, and deliver said return and plot to the commissioners or their clerk, on or before the day of their first regular meeting, next ensuing after the date of the order of the survey of said road, and he shall also furnish at the same time a true and certified account of the time necessarily employed in making such survey ; and the board of commissioners shall immediately thereupon direct orders to be drawn on the county treasurer for the payment of the same, allowing the surveyor six dollars for each day necessarily employed in the survey, and making the return and plot, and the chain-bearers and markers each, three dollars, for every day necessarily employed by said surveyor, in the survey of said road.

SEC. 13. Upon receiving the return and plot of any road, the commissioners shall order the same to be recorded in a book to be kept for that purpose, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue their order directing the same to be opened ; and all county roads shall be sixty feet in width, unless the commissioners shall, upon the prayer of the petitioners for the same, determine on a less number of feet in point of width.

SEC. 14. When the place of beginning or true corner of any public road shall become uncertain, by reason of the removal of any marked tree or monument, by which such a road was designated, or from any other cause, the board of commissioners of the proper county may appoint three disinterested householders of the county to review, and if they deem it necessary, to straighten such road ; and reviewers shall cause the said road to be correctly surveyed and marked throughout, as in case of new roads, and shall make a return of the survey, and plot of such road, to the commissioners of the proper county, who shall cause the same, if approved by them, to be recorded as in other cases ; and thenceforth such road, surveyed as aforesaid, shall be considered as the public highway.

SEC. 15. If any person or persons, through whose lands any public highway is or may be established, shall be desirous of turning such road through any other part of his or their lands, such person or persons may, by petition, apply to the commissioners of the proper county, to permit him or them to turn such road through any other part of his or their land, on as good ground, and without materially increasing the distance, to the injury of the public; and on the receipt of such petition, accompanied by a sufficient bond to pay the costs and expenses to be incurred thereby, the commissioners shall appoint three disinterested householders as viewers, and a surveyor, who, or a majority of such viewers, shall proceed to view the ground over which the road is proposed to be turned, and ascertain the distance such road will be increased by the proposed alteration, and make out a report in writing, stating the several distances so found, together with their opinion as to the utility of making such alteration; and if the viewers, or a majority of them, shall report to the commissioners, that the prayer of the petitioner or petitioners, is reasonable, and that the proposed alteration will not place the road on worse ground, or materially increase the distance to the injury of the public, they shall order the same to be so altered; and upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road, for the convenience of travelers, the commissioners may declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced in the new, and the person or persons petitioning for the alteration, shall pay all the costs and expenses of the view, survey, and return of such alteration.

SEC. 16. The compensation of viewers and reviewers shall be three dollars for every day that they shall be necessarily employed in discharging their duties, and if any such viewer and reviewer shall refuse or neglect to perform the duties required by this act without making satisfactory excuse for such refusal or neglect, he shall be fined by the commissioners in any sum not exceeding ten dollars, to be recovered by action before a justice of the peace of the proper county, which fine, when collected, shall be paid over without delay, into the county treasury.

SEC. 17. Upon application being made, under the provisions of this act, for a view or review of any public road, proposed to be laid out, altered or vacated, the commissioners shall, before issuing their order to the viewers, require a bond to be executed by one or more of the petitioners for such view or review, with sufficient surety, to be approved by the commissioners or their clerk, and made payable to the board of commissioners, in such sum as they shall direct, not exceeding two hundred dollars, conditioned that if the prayer of the petitioners be not granted, and allowed, the persons executing such bond will pay all costs and expenses that may be incurred by reason of such view or review.

OF LOCATING PRIVATE WAYS.

SEC. 18. When and how private ways may be opened.
19. Viewers of private ways to make report, and when their report to be confirmed. Private roads to be recorded. Appeals allowed as in public road.

SEC. 18. Any person, whose land shall be so situated, that it has no connection with any public road, may make application in writing to the board of commissioners of his county, at a regular session, for a private road leading from his premises, to some convenient public road, and thereupon the said commissioners shall appoint three disinterested householders of the county as viewers, and shall issue an order directing them to meet on a day named in such order, to view and locate a private road according to the application, and to assess the damages to be sustained thereby; and after being duly sworn or affirmed faithfully and impartially to discharge the duties of their appointment, and after at least three days' notice, given to all persons through whose lands such private road is to be located, such viewers shall proceed to locate and mark out a private road, thirty feet in width, from some certain point on the premises of the applicant, to some certain point on the public road, so as to do the least damage to the lands through which such private road is located, and they shall also at the same time assess the damages sustained by the person or persons owning such lands.

SEC. 19. The viewers so appointed, or a majority of them, shall make a report to the commissioners at their next regular session, of the private road so located by them, and also the amount of damages, if any, assessed by them, and the person or persons entitled to such damages; and if the commissioners are satisfied that such report is just, and after payment by the applicant of all costs of locating such road, and the damages assessed by the viewers, they shall order such report to be confirmed, and declare such road to be a private road, and the same shall be recorded as such, and any person, aggrieved by the assessment of damages, may appeal, within twenty days after such confirmation of the report, to the district court, and such appeal shall be tried as appeals from the assessment of damages in case of county roads.

OF THE MANNER OF LOCATING TERRITORIAL ROADS.

SEC. 20. Location of territorial roads; width of.
21. Proceedings of commissioners. Reports of surveys to be delivered to the secretary of the territory and county commissioners.
22. Accounts to be rendered by commissioners; how paid.
23. Proceedings on complaint of person aggrieved by a survey of a road.
24. Road to be a public highway; how to be kept open and worked.

SEC. 20. Every territorial road to be hereafter located, shall be viewed, surveyed, and returns thereof made according to the provisions of this act, within one year from the passage of the act, authorizing such road to be laid out, and the width of all territorial roads shall be sixty feet.

SEC. 21. The commissioners appointed to locate any territorial road, after having taken an oath or affirmation faithfully to discharge the duties of their appointment, shall proceed to view and locate such road, and shall cause the same to be correctly surveyed and marked throughout, from the beginning to the end, in the same manner that county roads are required to be surveyed and marked, and such commissioners, or a majority of them, shall make a report, descriptive of the general face of the conntry, over which such road passes, accompanied by a plot of the survey, certified by the surveyor, which report and plot shall, within sixty days after the view and survey, be delivered to the secretary of the territory, to be by him filed and recorded; and within the same period of sixty days, they shall, in like manner, deposit in the office of the clerk of the board of county commissioners of each county, through which such road passes, a report and plot as aforesaid, of so much of said road as shall be located in such county, to be there recorded as aforesaid.

SEC. 22. The commissioners appointed to locate any territorial road shall, after the completion of the survey of the same, make out a certified account of all the services rendered, as well by themselves as by the surveyor, and other persons employed, charging each county through which said road may have been laid out, a proportion of the expenses, according to the number of the days employed in such county; and the board of county commissioners shall audit, and order the same to be paid out of the county treasury.

SEC. 23. When any person, through whose lands any territorial road may be located, shall conceive that he would be injured by the opening of the same through the premises, he may, within six months after the filing of the report and plot of survey of such road, in the office of the clerk of the board of commissioners of such county, make complaint in writing to such commissioners, setting forth such damage, and thereupon the same proceedings shall be had to assess and determine the damages sustained by such complainant, as in case of county roads, and such damages shall be paid out of the treasury of the county in which the lands are situated.

SEC. 24. When any territorial road shall have been located according to the provisions of this act, the same shall be and remain a public highway, and shall be opened and worked by the counties through which it may be laid out, as county roads are, and such road may be altered or changed in any county, in the same manner as county roads are altered.

OF ROAD SUPERVISORS, AND THEIR DUTIES.

SEC. 25. How each county may be divided into road districts.
26. Road supervisors, how appointed, term of office, oath and bond.
27. Supervisor to make out lists of persons in his district liable to work road.
28. Estimates and assessment of labor by supervisor.
29. Names omitted may be afterwards inserted.
30. Supervisor to notify persons in his disteict; penalty for neglecting or refusing to obey notice or orders.
31. Process not to issue in cases of sickness.
32. Persons notified when and how required to appear; allowance to be made for extra labor.
33. How fines to be collected, and proceeds applied.
34. Duties and powers of supervisor.
35. Complaints against supervisor; remedy.
36. Supervisors to erect finger boards at forks and crossings.
37. Supervisor to keep road in repair.
38. How allowance to be made for extra services.
39. Accounts of supervisors to be presented to the county commissioners: settlement of may be enforced.
40. Proceedings against delinquents.
41. Liability of supervisors for misconduct.
42. Compensation of supervisor.

SEC. 25. The several boards of county commissioners shall, as often as they may deem necessary, but not oftener than once a year, divide their respective counties, or any part thereof into suitable and convenient road districts, and cause a brief description of the same to be entered on the county records.

SEC. 26. The board of commissioners shall annually, at their session in April, appoint one supervisor of roads for each road district in the county, and may, at any time, fill vacancies that may occur in such office, and they shall cause the supervisors by them appointed to be notified thereof in writing. Each supervisor shall hold his office until the following April session of the commissioners, and before entering upon the discharge of his duties, shall take an oath or affirmation, faithfully to discharge the duties of his office, and if required by the commissioners, shall execute an undertaking to the board of commissioners, with one or more sureties, in any sum specified by them not exceeding one thousand dollars, conditioned that he will faithfully account for, and pay over according to law, all moneys that may come into his hands by virtue of his office.

SEC. 27. It shall be the duty of every supervisor of roads, on or before the fifteenth day of May, to obtain the names, and make out in alphabetical order, a list of all persons liable to perform labor on the public roads, residing within his road district, and to affix to each name therein the number of days' work, which such persons shall be assessed to perform.

SEC. 28. In making such estimate and assessment the supervisor shall proceed as follows:—

1. He shall assess three days' work to be performed by every male between eighteen and fifty years of age, residing in his road district, except ministers of the gospel, and persons who are a public charge or too infirm to perform labor, and for each and every thousand dollars valuation of taxable property, an additional day's work.

2. The supervisor of each road district shall have power, if in his opinion, the state of the roads require it, at any time during his term of office, to require every man, except those before excepted in this act, to perform two additional days' work, and to assess one additional days' work for every one thousand dollars valuation of taxable property within his district, and the said supervisor shall have the same power to enforce the said additional tax, as has been heretofore given him in this act to enforce the original tax.

3. The tax on property shall be paid and expended in the road district where the property is situated, whether the owner of such property lives in such district or not.

Sec. 29. Whenever the supervisor shall, from any cause have neglected or omitted to place on his list, and assess any person, within the time required by law, he shall at any time afterwards, place the name of such person on the list, and assess the number of days' work to be performed by him; which assessment shall in all respects be valid, as if made in due time.

Sec. 30. The supervisor shall notify every person within his road district, subject to road labor as aforesaid between the first and the last day of June annually, to perform the work assessed on the public roads within his district; and if any person subject to road labor as aforesaid shall, after three day's previous notice, either personally or by writing left at his usual place of abode by the supervisor or any other person by direction of the supervisor, refuse to attend, by himself or suitable substitute, at the time and place designated by the supervisor, or having attended shall refuse to obey the directions of the supervisor, or shall pass his time in idleness and inattention to the duties assigned him, every such delinquent shall forfeit and pay for each day he shall neglect or refuse to attend, or for any of the offences above specified in this section, the sum of three dollars, to be recovered in a civil action, at the suit of the supervisor, before any justice of the peace having jurisdiction; or if the aggregate amount of such sums be over one hundred dollars, by action in the district court, and all money so collected shall be appropriated as hereinafter directed.

Sec. 31. Whenever it shall happen in consequence of sickness, absence from home, or any other good cause, that a person liable to perform work as aforesaid, does not attend, in obedience to the notice of the supervisor at the time and place appointed, and such person is willing to perform, or cause to be performed, the labor required by this act, no process shall be issued for the recovery of the penalty above prescribed, but the supervisor shall employ such person, or his substitute, at another time and place, to be designated by such supervisor.

SEC. 32. Every person notified to labor on the public roads, under the provisions of this act, shall be required to appear at the place appointed by the supervisor, at the hour of seven o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct; and such supervisor may, if he deem it necessary, order any person owning the same, to furnish a team of horses, mules, oxen, and wagon, cart, scraper, or plow to be employed or used on the roads, under the direction of such supervisor, who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper or plow in discharge of any labor due from such person.

SEC. 33. It shall be the duty of every supervisor to collect, by suit or otherwise, in his own name, as such supervisor, all fines, forfeitures and penalties arising and accruing under the provisions of this act for the non-performance of labor, and to expend the same in the employment of men, when necessary, to put the public roads of his road district in good repair; and if any portion of the moneys collected by him, shall not be so expended, he shall pay the same over to the county treasurer, on or before the first of April, annually, and take his receipt for the same, which receipt shall be a proper voucher for the supervisor to settle with the county commissioners for the amount thereof; and the commissioners shall cause all moneys so paid into the county treasury to be appropriated to repairing the roads, in such road district where such fine, forfeiture or penalty accrued.

SEC. 34. The supervisor of roads shall open, or cause to be opened, all public roads which may have been, or may hereafter be laid out and established according to law, in any part of his road district, and shall keep the same in good repair; and he shall have authority to purchase with any money which may come into his hands as supervisor, for the use of his road district, any plows, scrapers or other implements which he may think proper, and to enter upon any lands adjoining or near the public road, and gather, dig and carry away any stone, gravel or sand, and cut down and carry off any trees or wood necessary for the making and repairing any public road, and to purchase and pay for any timber, plank or other materials necessary for making or repairing any public road in his district, and to enter upon any lands adjoining or lying near any public road in his road district, and cut, open, or construct such drains and ditches as he shall deem necessary for the making or preservation of such road, doing as little injury as may be to such lands; and any person stopping or obstructing the drains or ditches so made, shall forfeit the sum of twenty dollars for each offence, to be recovered and appropriated as provided in the last section.

SEC. 35. If any person shall feel agrieved by the act of any supervisor cutting or carrying away timber or stone as aforesaid, he may make complaint thereof, in writing, to the county commissioners, at any regular meeting within six months after the cause of such complaint shall exist; and such commissioners shall proceed to assess and determine the damages, if any, sustained by the complainant, and cause the same to be paid out of the county treasury.

SEC. 36. Every supervisor shall erect and keep up at the forks of every highway, and every crossing of public roads within his road district, a guide or finger board, containing an inscription, in legible letters, directing the way, and specifying the distance to the next town or public place, situated on each road respectively.

SEC. 37. If at any time during the year any public road shall become obstructed by the falling of timber, or from any other cause, or any bridge shall be impaired or become dangerous for the passage of teams or travelers, the supervisor of the road district, upon being notified thereof, shall forthwith cause such obstructions to be removed or bridges repaired, for which purpose he shall immediately order out such number of the inhabitants of his district as he may deem necessary to remove such obstruction, or repair such bridge; and all persons so ordered out shall, after having received one day's notice, be subject to the same restrictions, and liable to the same penalties as if ordered out under the thirtieth section of this act.

SEC. 38. In all cases when any person shall, under the direction of the supervisor of roads, perform more labor upon the public roads than may be due from him, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate may be transferred and received in discharge of the labor of any other person, within the same road district, to the amount of labor specified in such certificate, or may be received from the holder in satisfaction of labor on the roads, in such road district, in any subsequent year, for the amount of labor specified therein.

SEC. 39. Every supervisor shall keep an account of the number of day's work performed on the public roads in his road district, and of the persons performing the same; he shall also keep an account of all moneys received by him from delinquents, or for fines or penalties, and the persons from whom received; and also, an account of his expenditures as supervisor during his term of office: and such supervisor shall present his accounts to the board of commissioners for settlement, at their April session in each year, and shall pay over to the county treasurer all moneys remaining in his hands as such supervisor, taking a receipt therefor. And if any supervisor, shall fail to appear and make a settlement as required in this section, the board of county commissioners may, by an action in the district court of the proper county, against such supervisor, enforce such settlement, and recover any balance remaining in his hands.

SEC. 40. In all cases where the supervisor of roads shall be unable to collect from any delinquent, the amount of any tax, forfeiture, fine or penalty, as provided in this act, it shall be the duty of such supervisor to return a list of such delinquents, certified on oath, to the board of commissioners of the county, at their session in April; and the commissioners shall, after adding ten per cent to the amount due by such delinquent, furnish the sheriff of the proper county with a true copy of such list, and the amount due from each, with a precept thereto attached, under seal of said board of commissioners; and the sheriff shall thereupon proceed to collect the same in like manner, and under the same provisions, that the county revenue is collected.

SEC. 41. Any supervisor of roads, who shall neglect or refuse to perform the several duties enjoined upon him by this act, or who shall under any pretence whatever, give or sign any receipt or certificate, purporting to be a receipt or certificate for money paid and labor performed, unless the money shall have been paid or the labor performed, prior to the giving or signing such receipt or certificate, shall forfeit for every such offense not less than five nor more than fifty dollars, for the use of his county, to be recovered before any justice of the peace having jurisdiction of the same, in the name of the board of commissioners, and it is hereby made the duty of the commissioners to sue for the same: *Provided*, That if any supervisor conceive himself aggrieved by the decision of the justice of the peace, he may appeal to the district court, as in other cases.

SEC. 42. Every supervisor of roads shall receive for each day necessarily employed in the performance of any of the duties required by this chapter, over and above the number of day's work required by law to be performed by such supervisors, the sum of three dollars, to be paid out of the county treasury, on the order of the board of commissioners, after being sanctioned by them, and after the report of the doings of said supervisor shall have been received, approved, and settled by said board of commissioners.

AN ACT IN RELATION TO TERRITORIAL ROADS.

SEC. 1. How vacancies in the office of road commissioners to be filled.
2. Report of road commissioners to be filed with the secretary of the territory.
3. Report of county commissioners to be filed with the secretary of the territory.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That whenever there shall be a vacancy in any board of territorial road commissioners that have been, or may hereafter be, created by the legislature, and which have not before been provided for, the county commissioners of the county in which the vacancy occurs, shall, at their first meeting thereafter, fill such vacancy. But in case of the resignation of any commissioner the person so resigning may appoint a person to fill the place thus vacated, who, being duly qualified as heretofore provided, may enter upon his duties.

SEC. 2. Every board of territorialroad commissioners shall file with the secretary of the territory, for the use of the legislature, duplicates of their report, which shall contain an estimate of the probable cost of constructing the road, and all necessary bridges thereon, and stating the amount of expenditure to be made in each county, and the amount of expenses incurred in laying out said road.

SEC. 3. The county commissioners of every county through which any territorial road may pass, shall report annually, in duplicate, to the secretary of the territory for the use of the legislature, an account of the expenditure made during the year, in constructing said road, and the condition of the same.

AN ACT REGULATING FERRIES.

SEC. 1. County commissioners may license ferries.
2. Commissioners shall fix tax on such license.
3. Owner of land adjoining stream, shall be first entitled to such license.
4. Notice requisite to obtain a license or renewal thereof.
5. Bond to be filed on application for license.
6. Every person licensed must keep necessary boats, hands, &c.
7. Ferry to be kept passable at certain times and penalty for refusal.
8. Board of commissioners to establish rates of ferriage.
9. Posted notice of rates of ferriage made necessary, and penalty for omission.
10. Preference to be given for certain passengers.
11. Exclusive privileges granted to licensed ferrymen.
12. Penalty for not paying tax, or for not keeping necessary boats, etc.
13. Penalty for charging rates of ferriage, without first obtaining a license..

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington*, That the board of commissioners of any county in this territory, may grant a license to any person entitled and applying therefor, to keep a ferry across any lake or stream within their respective counties, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioners, not exceeding five years.

SEC. 2. The board of commissioners shall tax such sum as may appear reasonable, not less than one dollar nor more than one hundred dollars per annum for such license, and the person to whom such license shall be granted, shall pay to the county treasurer, the tax for one year in advance, taking his receipt therefor, and upon the producion of such receipt, the clerk of the board of commissioners shall issue such license, under the seal of the board of commissioners.

SEC. 3. No such license shall be granted to any person other than the owner of the land embracing or adjoining such lake or stream where such ferry is proposed to be kept, unless such owner shall neglect to apply for said license. And whenever such application shall be made for a license by any person other than such owner, the board of commissioners shall not grant the same, unless proof shall be made that the applicant caused notice in writing of his intention to make such application, to be given to such owner, if residing in the county, at least ten days before the session of the board of commissioners at which application is made.

SEC. 4. Every person intending to apply for a license to keep a ferry at any place, shall give notice of such intention, by posting up at least three notices in public places in the neighborhood where the ferry is proposed to be kept, or by advertising in the nearest newspaper published in the territory, twenty days prior to any regular session of the board of commissioners, at which the application shall be made: *Provided*, That when application shall be made for a renewal of a license, where the former license has expired, the same may be granted or renewed, without previous notice or petition.

SEC. 5. Every person applying for a license to keep a ferry shall, before the same is issued, enter into a bond with one or more sureties, to be approved by the clerk of the commissioners, in a sum not less than one hundred, nor more than five hundred dollars, conditioned that such person will keep said ferry according to law, and if default shall at any time be made in the condition of such bond, damages not exceeding the penalty may be recovered by any person aggrieved, before any court having competent jurisdiction.

SEC. 6. Every person obtaining a license to keep a ferry shall provide, and keep in good and complete repair, the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient number of discreet and skillful men to attend and manage the same, and he shall also, at all times, keep the place of embarking and landing in good order and repair, by cutting away the banks of the stream, so that persons and property may be embarked and landed without danger or unnecessary delay.

SEC. 7. Every person obtaining a license as aforesaid, shall give constant and diligent attention to such ferry, from daylight in the morning until dark in the evening of each day, and shall moreover, at any hour in the night, if required, except in cases of evident danger, give passage to all persons requiring the same, on the payment of double the rate of ferriage allowed to be taken in the day time; and if he shall at any time neglect or refuse to give passage to any person or his property, he shall forfeit and pay to the party aggrieved, for every such offense, the sum of twenty-five dollars, to be recovered before any justice of the peace having jurisdiction, and he shall moreover be liable in an action at law for any special damage which such person may have sustained in consequence of such neglect or refusal; but no forfeiture or damages shall be recovered for a failure or refusal to convey any person or property across such stream when it is manifestly hazardous to do so, by reason of any storm, flood, or ice, nor shall any keeper of a ferry be compelled to give passage to any person or property, until the fare or toll chargeable by law, shall have been fully paid, or tendered to such keeper.

SEC. 8. Whenever the board of commissioners of any county shall grant a license to keep a ferry across any lake or stream, such board shall establish the rates of ferriage which may lawfully be demanded for the transportation of persons and property across the same, having due regard to the breadth and situation of the stream, and the dangers and difficulties incident thereto, and the publicity of the place at which the same shall have been established; and every keeper of a ferry, who shall at any time demand and receive more than the amount so designated for ferrying, shall forfeit and pay to the party aggrieved for every such offense the sum of ten dollars, over and above the amount which shall have been illegally received, to be recovered before any justice of the peace having jurisdiction.

SEC. 9. Every person licensed to keep a ferry, shall post up, in some conspicuous place near his ferry landing, a written or printed list of the rates of ferriage which are chargeable by law at such ferry, which list of rates shall at all times be written or printed in a plain legible manner, and posted up so near the place where persons shall pass across such ferry that the same may be easily read; and if at any time such keeper shall neglect or refuse to post and keep up such list, it shall not be lawful to charge or take any ferriage or compensation at such ferry, during the time of such delinquency.

SEC. 10. All persons shall be received into the ferry boats and conveyed across the stream, over which such ferry shall be established, according to their arrival at the same, and if any keeper of a ferry shall act contrary to this regulation, he shall forfeit and pay the sum of ten dollars for every such offense, to the party aggrieved, to be recovered before any justice of the peace having jurisdiction: *Provided*, that public officers, on urgent business, post-riders, couriers, physicians, surgeons and midwives, shall in all cases be first carried over, where all cannot go at the same time.

SEC. 11. Every person licensed to keep a ferry, according to the provisions of this act, shall have the exclusive privilege of transporting all persons and property over and across the stream, where such ferry is established, and shall be entitled to all the fare, arising by law therefrom; *Provided*, That nothing herein contained shall be construed to prevent any person from crossing over such stream at such ferry in his own boat, or to take in and carry over his neighbor, when the same is done without fee or charge, and not with intent to injure any person licensed to keep a ferry.

SEC. 12. If any person licensed to keep a ferry, shall fail to pay the tax assessed thereon, when due, or shall not provide and keep in good and complete repair, the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or shall neglect to employ a sufficient number of skillful and discreet ferrymen, as is provided in the sixth section of this act, within three months from the time license shall be granted; or if such ferry shall not at any time be kept in good condition and repair, agreeably to the provisions of this act, or if the same shall be abandoned, disused, or unfrequented for the space of one month at any one time, it shall be lawful for the board of commissioners of the proper county, on complaint being made in writing, to summon the person licensed to keep such ferry, to show cause why such license should not be revoked, and to decide thereon, according to the testimony adduced, and the laws of this territory, which decision when made, shall be valid, to all intents and purposes, but subject to an appeal to the district court, within twenty days after such decision shall be made: *Provided*, That if any ferry shall be disused by reason of the stream over which the same is established, being fordable at certain seasons of the year, or by reason of the travel being subject to periodical fluctuations, it shall not work a forfeiture, within the meaning of this section.

SEC. 13. Any person who shall maintain any ferry, and receive pay for ferriage, or let a boat knowing it will be used for ferry purposes, without first obtaining a license for the same shall pay a fine of twenty five dollars for each offense, to be collected for the use of the common school fund of said county by suit before any justice of the peace having jurisdiction, and any person is hereby authorized to bring such suit: *Provided*, That it shall not be considered unlawful for any person to transport any other person or his property over any stream for hire, when it shall be made evident that any ferry, established at such place was not in actual operation at the time, or in sufficient repair to have afforded to such person or his property a safe and speedy passage.

AN ACT TO AUTHORIZE AND REGULATE THE ERECTION OF WHARVES.

- SEC. 1. Persons owning lands adjoining navigable waters, may build wharves and charge wharfage.
- 2. County commissioners may authorize the erection of wharves at terminus of highway &c., and fix rate of wharfage.
- 3. Rates of wharfage under preceding section must be posted in conspicuous places on said wharf.

SEC. 1. Any person owning land adjoining any navigable waters or water course, within or bordering upon this territory, may erect upon his own land any wharf or wharves, and may extend them so far into said waters or water courses as the convenience of shipping may require; and he may charge for wharfage such rates as shall be reasonable: *Provided*, That he shall at all times leave sufficient room in the channel for the ordinary purposes of navigation.

SEC. 2. Whenever any person shall be desirous of erecting upon his own land any wharf, at the terminus of any public highway, or at any accustomed landing place, he may apply to the county commissioners of the proper county, who, if they shall be satisfied that the public convenience requires the said wharf, may authorize the same to be erected and kept up for any length of time not exceeding twenty years. And they shall annually prescribe the rates of wharfage, but there shall be no change for the landing of passengers and their baggage.

SEC. 3. Every person building or occupying a wharf, built according to the provisions of the preceding section, shall post up in a conspicuous place thereon, a table of the rates chargable by law, upon which table passengers and their baggage shall be marked free.

AN ACT TO PROVIDE FOR BUILDING BRIDGES.

SEC. 1. Power of board of county commissioners.
2. Bridges costing over fifty dollars to be built by the county.
3. County to repair, if it costs over fifty dollars.
4. Commissioner appointed to build and keep in repair.
5. Such commissioner to take an oath.
6. Not to commence building until appropriation is made.
7. Bridge commissioner to make an estimate.
Appropriation not to exceed estimate.
8. If estimate less than one hundred and fifty dollars, to be certified to overseer of road district.
9. Letting to be advertised.
10. How the same shall be let.
11. Cost to be paid out of the county treasury.
12. When and how bridges may be built, aided by subscription.
13. Bridges over county lines, how built.
14. When one moiety of the expense of such bridge is raised by subscription, counties to unite and pay the residue.
15. Proceedings when repairs are necessary.
16 & 17. Proceedings when bridge requires repairs, which by contract is to be kept in repair.
18. Bridge commissioner prohibited from contracting or being security.
19. Compensation.
20 & 21. May take rock or timber, to be paid for by allowance by county commissioners.
22. Person aggrieved by cutting such timber, viewers to be appointed to assess damages.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That each board of county commissioners shall determine what bridges shall be built and maintained at the expense of the county, and what by the road district.

SEC. 2. Where estimated expense for a bridge shall exceed fifty dollars, it shall be built by the county.

SEC. 3. The board of county commissioners may order any bridge built by the county, to be attached to a road district, for the purpose of being kept in repair by such district, but when the repairs necessary at one time shall exceed in value fifty dollars, the same shall not be required to be done by such road district.

SEC. 4. If the board of county commissioners shall be of opinion that a bridge is necessary, and that it should be built at the expense of the county, they shall determine in what manner, and of what materials, the same shall be built, and shall appoint some suitable person bridge commissioner, to contract for building such bridge, and for keeping in repair, not less than two nor more than four years, to be determined by the board of county commissioners.

Sec. 5. Said bridge commissioner shall take an oath faithfully to perform the duties enjoined on him by this act.

Sec. 6. The bridge commissioner shall do nothing towards building any bridge, until appropriation for the same shall first be made by the board of county commissioners.

Sec. 7. Unless the board, from its own information, shall be satisfied as to the expense of building the bridge, and shall make an appropriation accordingly, it shall be the duty of the said court to require the bridge commissioner to proceed to the spot where the bridge is to be built, and make an accurate estimate of the cost of building the same, according to any plan or plans ordered by the board of county commissioners, or such as in his opinion may be best, and without delay make report thereof, and the board may then, or may not, in its discretion, make an appropriation for building the bridge, which shall in no event exceed the estimate made by the bridge commissioner.

Sec. 8. If the estimated cost of the bridge shall be less than one hundred and fifty dollars, then that fact shall be certified to the overseer of the road district in which the bridge is to be built.

Sec. 9. The bridge commissioner shall advertise the time and place for letting the bridge out, at three public places in the township, (or at the court house door,) where such bridge is to be built, twenty days before letting the same.

Sec. 10. He shall let the same by receiving sealed proposals, to the lowest and best bidder, and shall take bond, payable to the county, with two good and sufficient householders as sureties, in such penalty as he shall deem sufficient, to cover all damages which may accrue from the breach of of such contract.

Sec. 11. The board may order the expense of building such bridge out of any money in the county treasury.

Sec. 12. When one moiety of the estimated expense of building any bridge, upon any county road, shall have been raised by individual subscription, and such subscription exhibited to the board of county commissioners, with a petition from ten resident householders, in the county in which such bridge is intended to be built, praying the erection thereof, the court shall take such petition into consideration, and if in their opinion, all things considered, the interest of the public will be promoted by building the bridge, at that time, they shall make an order for building the same, and for the payment of the residue of the estimated expense of building said bridge, out of the county revenue.

Sec. 13. If a bridge be necessary over any water course, which divides one county from another, the board of county commissioners of both counties shall unite in appointing a bridge commissioner for building said bridge, and the expense shall be defrayed by both counties, in proportion to the amount of tax of each, to be ascertained by the tax list, taken next before the contract for building such bridge shall be made.

SEC. 14. When one moiety of the estimated expense of building such bridge shall be raised by subscription, both boards of county commissioners, if satisfied of the expediency of so doing, shall forthwith unite to cause such bridge to be built, and shall pay the residue of the expenses of the bridge, in the proportion hereinbefore directed.

SEC. 15. The board of county commissioners shall, whenever it is necessary, without delay, make an appropriation to repair any public bridge in the county; and whenever any bridge shall be repaired, the like preliminary steps shall be had as in case of building a bridge, and the bridge commissioner shall have the same powers, and proceed in like manner, as in building a bridge.

SEC. 16. If any public bridge require repairing, which by contract is to be kept in repair, the commissioner of such bridge, or if he be absent or fail, or is incapable of acting, then a commissioner to be appointed by the board of commissioners, shall give notice, in writing, to any one or more of the obligors, or to his or their securities, stating the repairs necessary to be made, and requiring the same to be done within a reasonable time, to be set forth in such notice.

SEC. 17. If the repairs shall not be made within such time, the commissioner shall employ some other person forthwith to make the same, allowing therefor a reasonable price, and may immediately collect the amount paid, with costs, before any court of competent jurisdiction.

SEC. 18. No bridge commissioner shall be a contractor for building a bridge of which he is commissioner, nor be security for any such contractor.

SEC. 19. Such bridge commissioner shall be allowed three dollars for each day necessarily employed in the discharge of the duties of his office, to be paid out of the county treasury or treasurys of the county or counties in which said bridge may be located.

SEC. 20. He may take, or cause to be taken, from the adjoining or most convenient land, such quantity of rock and timber as may be necessary for the building or repairing of such bridge.

SEC. 21. When timber or rock shall be taken from the land of any individual, the board of county commissioners may allow compensation for the same.

SEC. 22. If any person be aggrieved by the cutting of such timber, such person may apply to the board of county commissioners of the proper county, who shall appoint three disinterested householders as viewers, who, after taking the proper oath or affirmation, shall proceed to assess the damages, if any, which shall be paid out of the county treasury or treasurys of the county or counties in which said bridge is located.

AN ACT TO ENCOURAGE THE BUILDING OF BRIDGES, PLANK OR TURNPIKE ROADS.

Sec. 1. Privilege to build bridges, plank roads and turnpikes granted.
2. Such privilege not to obstruct public roads.
3. Property made by authority of this act may be taken by the county.
4. List of charges to be posted up by the owner.
5. Toll must be first paid before crossing.
6. Provisions of this act how construed.

Sec. 1. *Be it enacted by the Legislature of Washington Territory*, That any person or persons having the right of soil, or, having the consent of the owners thereof, may build over any river, creek, swamp, ravine, crevice, precipice or gully, a good and substantial bridge, plank, or turnpike road at his own expense, and shall receive such compensation in tolls as may be reasonable.

Sec. 2. This act shall not hinder the proper authorities from laying out roads alongside of said bridges, plank or turnpike roads, nor shall any person, under and by virtue of this act, in any way obstruct any county or territorial road now in use, or which shall be established before said bridges, plank or turnpike roads shall be made.

Sec. 3. If at any time any bridge, plank or turnpike road that may be built by virtue of this act, may be necessary for the convenience of the traveling public, it shall be lawful for the proper authorities of any county, or the territory, to appropriate any such bridges, plank or turnpike roads to the use of the county or territory, by first paying to the owner or owners what said bridge, turnpike or plank road may be worth at the time it is appropriated to the use of the public ; said value to be determined by three disinterested persons, or a majority of them, one to be selected by the sheriff of the county in which said road is situated, the other by the parties interested, and the two persons selected as aforesaid, shall choose a third.

Sec. 4. All persons who may build any bridge, plank or turnpike road, under the provisions of this act, shall put up and keep, in some conspicuous place at each end of said bridge or road, a list of charges which shall not be changed at any time except on the first Mondays of January of each year; and said notice shall name the person or persons to whom such charge may be paid.

SEC. 5. All persons wishing to cross any bridge or road that may be constructed under the provisions of the foregoing act, shall first pay to the person named in said notice, or his agent, the amount charged in the said list of prices.

SEC. 6. Nothing in this act shall be so construed as to prevent the proper authorities of counties, or the territory, from constructing a public road across any such bridge, plank or turnpike road, doing as little injury as possible to its proprietors, free of charge ; and it shall also be lawful for any person building a bridge, plank or turnpike road under the provisions of this law, to build across any public road, provided he shall not in any way obstruct or injure said public road.

AN ACT REGULATING THE TIME WITHIN WHICH CIVIL ACTIONS MAY BE COMMENCED.

SEC. 1. Actions to begin within the periods fixed by this act.
In district court objection to be made by answer.
2. Actions which may be commenced within twenty years.
3. Actions which may be commenced within six years.
4. Actions which may be commenced within three years.
5. Actions which may be commenced within one year.
6. Actions to recover penalties to begin within one and two years after the offense is committed.
7. Action for relief not provided, to begin within two years.
8. Cause of action to date from the last item in an account.
9. This act to apply to actions in the name of the territory.
10. Actions against persons absent from the territory.
11. Time of disability not the time of limitation.
12. Actions for and against decedents, limitation of.
13. Aliens not to count time of war.
14. Time of injunction not counted as time of limitation.
15. New action may be commenced within one year after reversal of judgment on error or appeal.
16. No person to plead disability unless it existed at the time.
17. When two disabilities exist both to be removed.
18. Acknowledgments to be in writing.
The effect of principal and interest not altered.
19. Limitation to begin from the last payment made.
20. Limitations in other states or territories a bar in this.
21. This act not to effect actions already commenced.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That actions can only be commenced within the periods herein prescribed, after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute. But in the district court, the objection that the action was not commenced within the time limited, can only be taken by answer.

SEC. 2. The period prescribed in the preceding section for the commencement of actions, shall be as follows:

Within twenty years,

1st. Actions for the recovery of real property, or for the recovery of the possession thereof, and no action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question, within twenty years before the commencement of the action.

SEC. 3. Within six years,

1st. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States;

2d. An action upon a contract in writing, or liability express or implied, arising out of a written agreement;

3d. An action for the rents and profits, or for the use and occupation of real estate.

SEC. 4. Within three years,

1st. An action for waste or trespass upon real property;

2d. An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another, not hereinafter enumerated;

3d. Actions upon all contracts, express or implied, which are not in writing, and do not arise out of any written instrument;

4th. An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

5th. An action against a sheriff, coroner or constable, upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape;

6th. An action upon a statute for penalty or forfeiture, where action is given to the party aggrieved, or to such party and the territory, except where the statute imposing it prescribed a different limitation, and for seduction and breach of marriage contract.

SEC. 5. Within one year,

1st. An action for libel, slander, assault, assault and battery, and false imprisonment;

2d. An action upon a statute for a forfeiture, or penalty to the territory;

3d. An action against a sheriff or other officer, for the escape of a prisoner arrested, or imprisoned on civil process.

SEC. 6. An action upon a statute for a penalty given in the whole, or in part to the person who will prosecute for the same, shall be commenced within one year after the commission of the offense, and if the action be not commenced within one year by a private party, it may be commenced within two years thereafter in behalf of the territory, by the prosecuting attorney of the district in which the county is situated where the offense was committed.

SEC. 7. An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

SEC. 8. In an action brought to recover a ballance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item, proved in the account on either side.

SEC. 9. The limitations prescribed in this act, shall apply to actions brought in the name of the territory, or for its benefit, in the same manner as to actions by private parties.

SEC. 10. If when the cause of action shall accrue against any person, who shall be out of the territory or concealed, such action may be commenced within the terms herein respectively limited after the return of such person into the territory, or the time of his concealment, and after such cause of action shall have accrued, such person shall depart from and reside out of this territory or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

SEC. 11. If a person entitled to bring an action mentioned in this act, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, be at the time the cause of action accrued ; either

1st. Within the age of twenty-one years ;

2d. Insane ;

3d. A married woman.

The time of such disability shall not be a part of the time limited for the commencement of the action.

SEC. 12. If a person entitled to bring an action, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of the time, and within one year from his death.

If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary, or of administration.

SEC. 13. When a person shall be an alien subject, or a citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

SEC. 14. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

SEC. 15. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on error or appeal, the plaintiff, or if he die, and the cause of action survives, his heirs or representatives, may commence a new action, within one year after the reversal.

SEC. 16. No person shall avail himself of a disability unless it existed when his right of action accrued.

SEC. 17. When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

SEC. 18. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this act, unless the same is contained in some writing signed by the party to be charged thereby, but this section shall not alter the effect of any payment of principal or interest.

SEC. 19. Whenever any payment of principal or interest has been, or shall be, made upon an existing contract, whether it be bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

SEC. 20. When the cause of action has arisen in another state, territory or country between non-residents of this territory, and by the laws of the state, territory or country where the cause of action arose, an action cannot be maintained thereon, by reason of the lapse of time, no action shall be maintained thereon in this territory.

SEC. 21. This act shall not extend to actions adready commenced, but the statutes now in force shall be applicable to such cases according to the subject of the action and without regard to form, nor shall any cause of action, barred by the statutes now in force, be revived by the provisions of this act, but causes of action now existing, and not already barred, shall not be barred, by reason of any time already elapsed, prior to this act taking effect.

AN ACT IN REGARD TO CLERK OF THE SUPREME AND DISTRICT COURTS, AND PRESCRIBING CERTAIN DUTIES FOR SUCH CLERKS.

SEC. 1. The supreme court to appoint a clerk.
2. Clerk to take oath and give bond.
3. Clerk to keep his office at the seat of government.
4. Clerk of the district court to be appointed. Term of office and bond.
5. County commissioners to provide an office.
6. Books to be kept by the clerk, and his duties.
7. Clerk to fill all papers.
8. Responsible for the custody and delivery of all books and papers.
9. Shall have power to administer oaths.
10. Shall not practice as an attorney.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the supreme court or the judges thereof, shall appoint a clerk, who shall hold his office during the pleasure of such court.

SEC. 2. Before entering upon the duties of his office, he shall take an oath of office and give bond in such a sum, with surety and condition, as the said court or judges thereof shall require, which bond shall be deposited with the secretary of the territory. The bond shall be to the territory of Washington, and any party aggrieved by the official acts or omissions of said clerk may have his action thereon.

SEC. 3. The clerk shall keep his office at the seat of government, and shall keep it open at all seasonable hours, and shall keep such records and books as are prescribed by law and the supreme court.

SEC. 4. There shall be appointed by the district court, or the judge thereof, in each county in this territory, in which a term of the district court is appointed to be held, a clerk, who shall also be register in chancery, who shall take an oath of office, and shall give bond in such a sum as shall be prescribed by law and the court or judge appointing him. He shall hold his office during the pleasure of the court appointing him. His bond shall be filed with the auditor of the county, and any person aggrieved by his official actions or omissions may sue thereon.

SEC. 5. The county commissioners of each county, shall provide an office at the county seat of the county, or make reasonable allowance therefor until suitable county buildings are erected, where said clerk in person, or by his deputy, shall attend at all times during the session of the court, and at reasonable times and on seasonable notice, shall be present during vacation.

SEC. 6. He shall, at the expense of the county, provide and keep a book, in which he shall enter all appearances and the time of filing all pleadings in any cause pending in said court. He shall also keep a docket, in which he shall enter, before every term, the titles of all causes pending before said court at such term, in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys—the character of the action—the pleadings upon which it stands at the commencement of the term, leaving a margin opposite each case for the court to enter a short minute of the orders of the term. One copy of this docket he shall furnish for the use of the court, and another for the use of the members of the bar. He shall also provide and keep at each term, a minute book, in which he shall enter the names of witnesses and jurors, with time of attendance, distance of travel, and whatever else is necessary to enable him to make out a complete cost bill. He shall also provide and keep a well bound book, to be called the order book or journal, in which he shall record the daily proceedings of the court, and enter all verdicts, orders, judgments and decisions thereof, from which every morning shall be read in open court, the proceedings of the previous day, which shall be signed by the judge ; but the court shall have full control of all entries in said journal at any time during the same term in which they were made. He shall also provide and keep well bound books, one for an execution docket, one for a book of levies, and one for a final record, in which he shall make a full and perfect record, of all criminal cases in which a final judgment is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is any way affected, and such other final judgments, orders or decisions as either party may require, and may pay him for recording. He shall also provide and keep such other books as are prescribed by law, and required in the discharge of the duties of his office.

SEC. 7. He shall file all papers that may be legally lodged with him for that purpose, noting the day, month and year, when so filed.

SEC. 8. He shall be responsible for the safe custody and delivery to his successor of all books and papers belonging to his office.

SEC. 9. He shall have power to administer oaths in every case where an oath is authorized by law.

SEC. 10. He shall not practice as an attorney or counsellor within the county where he resides and for which he is clerk, nor shall he be surety or bail in any case in the court of which he is clerk.

AN ACT TO REGULATE FEES AND COSTS.

SEC. 1. 1. For clerks of supreme and district courts in civil cases.
2. Sheriff's fees.
3. Fees of judges of probate.
4. Fees of county commissioners.
5. Fees of county auditor.
6. Notary public.
7. Coroner's fees.
8. Juror's fees.
9. Fees of justice of peace.
10. Constable's fees.
11. Witnesses.

SEC. 2. Clerk of county commissioners shall be paid only by order of board. How authenticated and filed.
3. Jury fee to be taxed on the bill of costs.
4. Officers not described, performing duties enumerated herein, entitled to same fees.
5. Table of fees to be made and posted in respective office. Penalty for violating this provision.
6. Bill of particulars and receipt when demanded, must be given.
7. Officers serving process on which charge is made, not entitled to receive items of charge.
8. When jury render verdict, fee of six dollars to be paid, and to whom.

SEC. 1. *Be it enacted by the Legislative Asssembly of the Territory of Washington,* That the fees and compensation of the several officers and persons herein named, shall be as follows, to wit:

FOR CLERKS OF SUPREME AND DISTRICT COURTS IN CIVIL CASES.

1st. For filing declaration, petition, pleas, demurrer, affidavit, exhibit, or any other paper in any cause, each,	10
For issuing a capias, attachment, execution, certiorari, supersedeas, summons, habeas corpus, quo warranto, mandamus, writ of error, or replevin, and for every other original writ, each,	$1 00
For entering each writ,	25
For issuing writs of scire facias and venditioni exponas, every hundred words,	25
For entering appearance of either party, personally or by attorney, charged but once,	25
For entering sheriff's return on any writ,	20
For docketing appeals from justices of the peace,	20
For docketing each cause, to be charged but once,	25
For issuing subpœna for witnesses, one person named therein,	50
For every additional person named,	10
For writs of venire for jury, charged in each cause tried,	50
For receiving panel and swearing jury,	50
For entering jury,	25

For swearing witnesses, each,	10
For entering claim of each witness for their attendance,	25
For giving order therefor to each witness,	20
For entering judgment, recognizance, special rule, continuance, discontinuance, retraxit, rule of reference, allowance of writ of habeas corpus, confession or judgment, or default, or consent, rule or plea, satisfaction of judgment on record, notice of appeal to supreme or district court,	75
For entering surrender of principal by bail, exonerator, order, order cancelling bail bond, discharge of recognizance, issue joined, motion, nonsuit, report of referees, judgment upon any issue of law or fact, or on report of reference, appeals from inferior courts, appeals to higher courts, and acknowledgments,	50
For taking affidavits, each,	50
For taking affidavit, with seal attached, each	1 00

SHERIFFS.

2d. For the service of every writ of summons a return thereof, (subpœnas only excepted,) on each defendant, besides mileage at fifteen cents per mile, which mileage shall be allowed in all cases, going and returning, to be charged from the county seat to the place of service,	$1 00
For levying each writ of execution, on real or personal property, besides mileage,	1 00
For service of a capias ad satisfaciendum upon the body of each defendant named in the writ, besides mileage,	1 75
For every bail bond,	2 00
For committing to prison, or discharging therefrom, or attending a person before a judge or court, besides mileage,	1 75
For serving a writ of possession without the aid of the county, besides mileage,	3 00
For serving a writ of possession with the aid of the county,	8 00
For executing a writ of inquiry and returning the same with the inquisition,	5 00
For a copy of any writ or process necessary to complete a service, for each hundred words,	25
For serving and returning a subpœna, besides mileage, for each person therein named,	75
For summoning a grand and petit jury, to be paid out of the county treasury, for each panel,	12 00
For summoning a jury in other cases required by law, besides mileage,	8 00

Percentage on all moneys actually made and paid to the sheriff on execution, decree, or sale of real estate, under one thousand dollars, one per cent.

Percentage on all sums over one thousand dollars, five mills.	
For serving a declaration in ejectment and return, besides mileage,	75
For making deed of lands sold on execution, decree, or order of court, to be paid by the grantee,	4 50
For serving a scire facias, for each defendant, besides mileage,	1 75
For serving any person with an order of court and making a return, besides mileage,	1 50
For calling a jury,	50
For opening court and calling each action, to be charged once each term of the court in which the case may be pending,	50
For calling each witness,	25
For bringing up a person on habeas corpus, besides mileage,	4 00
For each day's attendance on any court of record.	3 00

JUDGES OF PROBATE.

3d. For granting letters of administration,	$2 00
For probate of will or testament,	2 00
For granting letters testamentary,	2 00
When the same are contested,	5 00
Taking bonds of executors and administrators,	3 00
Taking bonds in other cases,	2 50
Hearing complaints against spendthrifts and lunatics,	2 50
Appointing guardian,	1 00
Decree for settlement of an estate,	1 50
When contested,	2 00
Order of distribution,	1 50
Examining inventory of appraisement or bill of sale and filing the same in office, each,	1 00
Every writ or process under seal,	1 00
Each order of court on record,	1 00
Examining accounts, each hundred words, counting two figures for a word,	25
Warrant to appraise or divide an estate,	1 00
Issuing commission,	50
Allowing appeal,	1 00
Approving securities in bonds, each,	25
Assigning dower in real estate,	1 00
Assigning personal estate to widow,	1 00
Refusing letters of administration or probate of will, to be paid by the losing party,	1 00

For every continuance when asked by a party,	50
Order for the sale of personal estate,	1 00
Certificate of necessity for the sale of real estate,	1 00
Order for partition of real estate,	1 00
Allowing reports on the accounts of executors or administrators,	1 00
Extending letters of administration,	50
Decree respecting the probate of will or codicil,	1 00
A quietus,	1 00
Filing each paper,	20
Administering an oath,	40
Recording all papers required by law to be recorded, for each hundred words,	25
Order for the appointment of an insolvent estate among the creditors,	1 00
Acknowledgment with seal,	50
Entering appointments of executors, administrators or guardians, or other appointments necessary,	1 00
Issuing letters of guardianship,	1 00
For hearing each contested case, to be taxed as cost against the party in default,	5 00
Issuing citation to executors, administrators and guardians,	1 00
Copies of papers and of records, each one hundred words,	25

COUNTY COMMISSIONERS.

4th. Services per diem,	$3 00
Mileage per mile, to and from the county seat,	15

FEES OF COUNTY AUDITOR.

5th. For making out assessment roll, and delivered to county assessor, for each quire such roll may contain,	$10 00
For making out original tax duplicate, for each one hundred words said duplicate may contain, counting every two figures as a word,	25
For making out exhibit of receipts and expenditures of county for past year, for each one hundred words, counting every two figures as a word,	25
For each settlement of his accounts, or of any other person, with the county,	50
For filing each paper, exhibit, or necessary document connected with the duties of his office,	12
For attending at each regular and special term of the board of county commissioners, per diem,	3 00
For recording proceedings of board of county commissioners, each one	

hundred words,	25
For each order drawn on county treasury,	10
For copy of any order of the board, (certified,)	50
For making out appointments upon order of the board, each,	50
For drawing each receipt.	10
For each notice delivered to the sheriff, for each general or special election,	50
For opening and examining election returns, and making abstracts of votes and copies thereof, per diem,	3 00
For each certificate of election,	25
For each order for view of road,	1 00
For taking bonds of county officers, and of all other persons required by the board or by law to give bonds, each,	1 00
For taking oath of county officers and other persons and certifying to the same,	50
For administering an oath,	20
For each bond executed by county commissioners to purchasers of county property, and other purposes,	1 00
For each deed executed by county commissioners,	1 50
For each poll book delivered to sheriff or judges of elections,	1 00
For filing each bond, oath, receipt, bill, order, appointment, petition, report, resignation, deed, affidavit, and all other papers required to be put on file,	10
For issuing each license, under seal, for grocery, tavern, ferry, or to peddlers, showmen, or managers or owners of circus, and all other licenses,	1 00
For entering grant of license on record,	25
For entering approval of county commissioners of license granted in vacation, in each case to be paid by applicant,	50
For notifying clerk of the district court of the appointment of grand and petit jurors, each list,	50
For all writs ordered issued by the board or required by law, the same fees as are allowed to the clerk of the district court for the same services.	
For reading and entering petition for view of road, to be paid by petitioners,	50
For reading and entering remonstrance against view of road, or petition for damages, each to be paid by the persons remonstrating,	50
For entering each appointment of road viewers, each,	25
For reading and entering report of road viewers,	50
For notifying justices of the peace or county commissioners to attend the opening and examining of the election returns, each,	25

For certified copy of commissioners' proceedings, or parts thereof, for each one hundred words, 20

For making final settlement of any account with the county, each one hundred words such account may contain, 25

And for all similar services required to be rendered, the same fees as are allowed by this act for similar services.

NOTARY PUBLIC.

6th. For every protest of a bill of exchange or promissory note, $1 50

Attesting any instrument of writing, and seal, 1 00

Noting a bill of exchange or promissory note for non-acceptance or non-payment, 1 50

Drawing and taking proof of acknowledgment of any legal instrument, each one hundred words, 35

Registering protest of bill of exchange or promissory note, 1 25

Certifying an affidavit, and all other certificates under seal, 1 00

Each oath or affirmation, 50

Being present at demand, tender, or deposit, and noting the same, including traveling fees at ten cents per mile, going to and returning from, 50

CORONERS.

7th. For each inquest he may hold, besides mileage at twenty cents per mile for each mile necessarily traveled, to hold any inquest, 10 00

When performing the duties of sheriff, shall receive the same fees as sheriffs are entitled to receive for services performed.

For drawing all necessary writings, each one hundred words, 30

For issuing venire, 65

JURORS.

8th. That each grand and petit juror shall be allowed for each day attendance, if not a talesman, $3 00

For every mile travel to and from the seat of justice, 10

Talesman serving as a petit juror, each trial, 1 50

Talesman serving as a petit juror, each trial, where he may be detained more than one day, 3 00

For every day's attendance upon justices of the peace court, besides mileage at ten cents per mile to and from, 2 00

For serving on an inquest, besides mileage at ten cents per mile to and from, 2 00

FEES OF JUSTICES OF THE PEACE.

9th. For a capias or summons,	$0 50
For a warrant in criminal cases,	75
For taking a recognizance of bail,	75
For committing to jail,	50
For every subpœna for one person,	40
For all persons more than one named in a subpœna,	20
For entering a judgment on trial,	1 25
For entering a judgment of confession or default,	75
For issuing an execution,	75
For a certified copy of proceedings on appeal, certiorari, or otherwise,	1 25
For each hundred words on certified copy of proceedings on appeal, certiorari, or othewise,	25
For every adjournment at the request of either party,	75
For entering a rule of reference or a copy thereof, each,	50
For swearing witnesses, jurors, or arbitrators, each,	25
For issuing writs of attachment,	75
For scire facias,	75
For entering a discontinuance or satisfaction,	50
For the acknowledgment of a deed, or other instrument of writing, with a certificate thereof.	75
For a venire for a jury,	50
For a writ of restitution,	50
For taking affidavits, each,	50
For every search warrant,	75
For marrying and return thereof, besides mileage at twelve and a half cents per mile, for the distance traveled from the residence of the justice to the place of marriage and back,	4 00
For attending with the clerk of the board of county commissioners at the opening of the poll books, per diem,	4 00

CONSTABLES.

10th. For serving every summons and return thereof (subpœnas only excepted,) on each defendant, besides mileage at twelve cents per mile to and from,	$1 00
For summoning on a dead body, including mileage at twelve cents per mile,	6 00
For service and return of a capias, or warrant, besides mileage,	1 00
For serving an execution on or goods, besides mileage,	1 00
For committing to prison, besides mileage,	1 00

For all moneys made on execution, ten per centum.	
For every day's attendance upon any court of record,	2 00
For every day's attendance upon the grand jury,	2 00
For serving other writs or any process, besides mileage,	75

WITNESSES.

11th. For every day's attendance upon the supreme or district court, besides mileage to and from at ten cents per mile,	$2 00
For every day's attendance, upon county commissioners, probate or court, besides mileage,	2 00
For every day's attendance upon justices of the peace court, if held within the precinct where the witness resides, besides mileage at ten cents to and from,	1 00
For every day's attendance upon justices of the peace court, when out of the precinct where the witness resides, besides mileage.	2 00

That the clerks of the several courts in this territory shall, for services under the several acts of congress upon the subject of naturalization, receive the fees hereinafter specified, and no more.

For entering a declaration of intention to become a citizen of the United States,	50
For a certificate of such entry under the seal of the court,	1 00
For entering the final admission of an alien to the rights of citizenship,	50
For a certified copy thereof under the seal of the court,	1 00

MISCELLANEOUS PROVISIONS.

SEC. 2. The clerk of the county commissioners shall, in all cases where his fees are paid out of the county treasury, be paid on order of the county commissioners, who shall be satisfied of the correctness of the account rendered by him ; and the same shall be authenticated by his oath, and filed with the county treasurer.

SEC. 3. That in all cases where a jury may be called to by the issue joined, and the defendant or defendants shall be convicted by the judgment, or sentence of the court before whom the same may be tried, there shall be taxed on the bill of costs the sum of twenty-five dollars, as a jury fee, and judgment shall be rendered therefor against such defendant or defendants, which sum, when collected by the clerk of said court, or the sheriff, to whom execution shall have been issued, shall be paid over to the county treasurer.

SEC. 4. All officers required by law to discharge any duties not specially provided for in this act, shall be entitled to the same fees as are allowed herein in other cases for similar services.

SEC. 5. That each and every officer whose fees are herein ascertained, limited, and appointed, shall, and they are hereby required to make a fair table of their fees respectively, according to this act; and to publish and set the same up in their respective offices, within two months after any such officer shall have been elected or appointed, in some conspicuous place, for the inspection of all persons who have business in said office, on pain of forfeiting, for each day the same shall be missing, through such officer's neglect, the sum of fifteen dollars, which penalty may be recovered by indictment, for the use of the county schools where the offense shall have been committed.

SEC. 6. That it shall and may be lawful for any person to refuse payment of fees to any officer who will not make out a bill of particulars, signed by him if required, and also a receipt signed by him for fees paid; and the bill of fees of the officers herein named, shall be subject to examination and correction by the several courts.

SEC. 7. That no sheriff, coroner, or constable shall be entitled to receive, either on mesne or final process upon which any charge shall be made, the particular items of such charges.

SEC. 8. On all civil actions where a jury render a verdict, the party in whose favor the verdict is rendered shall, before judgment is entered on the verdict, pay to the clerk six dollars which shall be allowed him and taxed against the other party in the bill of costs. The clerk shall pay the money forthwith to the county auditor to be by him audited to the jury.

AN ACT PROVIDING FOR CHANGE OF VENUE, UPON THE ORGANIZATION OF NEW COUNTIES.

SEC. 1. Offense committed within limits of new county, is triable within newly created county.
2. Party in civil action, residing in new county, may have change of venue to court of new county.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any defendant charged with the commission of any offence, and under recognizance or in custody to answer such charge, at any term of the district court of any county, out of whose territorial limits a new county, in whole or in part, has been created, not attached to another county for judicial purposes, may file with the clerk of such district court an affidavit, setting forth that the offense with which the defendant is charged, is alleged to have been committed within the limits of such newly created county, and that the defendant is a resident thereof; and upon the filing of such affidavit, the clerk shall make out a transcript of the proceedings already had against such defendant in such district court, and certify the same, under the seal of the court, and forward such transcript, with all the papers on file, connected with such charge, to the clerk of the district court of the newly created county, wherein it shall be proceeded with as in other cases.

SEC. 2. And a party in a civil action, pending in any district court of a county out of whose limits a new county, in whole or in part, has been created, not attached to any other county for judicial purposes, may file with the clerk of such district court an affidavit, setting forth that he is a resident of such newly created county, and that the venue of such action is transitory, or that the venue of such action is local, and that it ought properly to be tried in such newly created county; and upon the filing of such affidavit, the clerk shall make out a transcript of all the proceedings already had in such action in such district court, and certify to it, under the seal of the court, and transmit such transcript, together with all papers on file in his office, connected with such action, to the clerk of the district court of such newly created county, wherein it shall be proceeded with as in other cases.

AN ACT TO PROVIDE FOR A STAY OF EXECUTION UPON JUDGMENTS IN THE SUPREME AND DISTRICT COURTS.

SEC. 1. Length of stay of execution in district courts.
2. Requisites to entitle party to stay of execution.
3. Judgment may be taken at subsequent term of court, against sureties on bond.
4. Qualification of sureties same as bail in civil actions.
5. After issue of execution without a stay, and time unelapsed, a defendant may have a stay for unexpired time.
6. Bonds required by this act to be filed in offices of clerk of district court.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That stay of execution shall be allowed on judgments rendered in the supreme court and district courts, as follows:

1st. On all sums under three hundred dollars, three months.

2d. On sums over three hundred dollars, and less than one thousand dollars, six months.

3d. On sums over one thousand dollars, nine months.

SEC. 2. Before any execution shall be stayed under the provisions of this act, the defendant shall give bond to the opposite party, in double the amount of the judgment and costs, with surety to the satisfaction of the clerk, conditioned to pay said judgment, interest, costs, and increased costs, at the expiration of the period of said stay.

SEC. 3. If the judgment is not satisfied, at any time after the expiration of the period for which execution had been stayed, the plaintiff, at any subsequent term of the court from which the execution issued, may, upon motion, supported by an affidavit that such judgment, or any part thereof, is unpaid, and stating how much still remains due thereon, have judgment against the sureties, upon said bond, for the balance remaining due, and have an execution therefrom, upon which execution no stay shall be allowed.

SEC. 4. The sureties upon a bond for stay of execution shall possess the same qualifications, and justify in the same manner, as bail upon arrest, in civil actions.

SEC. 5. When execution has not been stayed, and execution issues before the time has elapsed for which it might have been stayed, as is herein provided, the defendant may have stay for the balance of time, upon giving the proper bond and surety, which bond and surety shall be approved by, and justified before the sheriff.

SEC. 6. Bonds required by this act shall, when taken, be lodged with the clerk of the court where the judgment was rendered, and placed on file in his office.

AN ACT TO EXEMPT CERTAIN PROPERTY FROM ATTACHMENT AND EXECUTION.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington*, That the following named articles of personal property, shall not be liable for the debts of the owners, and shall in all cases be exempt from attachment and execution, that is to say:—Dwellings and other buildings, to the value of five hundred dollars; all private libraries, all articles of clothing of married women, and children under twenty-one years; and to each family, kitchen and cupboard ware to the amount of one hundred and fifty dollars, and one bed for every two persons in the family, two cows, two horses, or two yokes of oxen, one wagon, two head of hogs, the farming utensils actually used by the family, produce raised upon the farm or garden, sufficient for six months consumption, and all tools of mechanics, used to carry on their trade.

AN ACT IN RELATION TO THE SEAL OF THE TERRITORY.

Sec. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That the description, in writing, of the great seal of the territory, shall be deposited and recorded in the office of the secretary of the territory, and shall remain a public record, and shall be and continue the great seal of the territory; and the person administering the government of the territory, shall have the custody of the said seal, and all such matters and things as issue under the said seal, shall be entered on the record in the office of the secretary of the territory.

AN ACT RELATING TO OFFICIAL SEALS.

Sec. 1. Boards of county commissioners shall furnish seals to courts in respective counties.
2. In the absence of official seal, temporary seal authorized.
3. Device by way of seal, as valid as actual seal.

Sec. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That it shall be the duty of the board of county commissioners of the several counties of the territory, to provide and furnish seals for such of the several district and probate courts, as are now unprovided with the same, and with such descriptions and devices, as the said courts shall respectively require.

Sec. 2. When any court of record shall be unprovided with a seal, the judge of said court may authorize the use of any temporary seal, or of any device by way of seal, until the same shall be provided as aforesaid.

Sec. 3. Any instrument to which the person making the same shall affix any device by way of seal, shall be adjudged and held to be of the same force and obligation, as if it were actually sealed.

AN ACT TO REGULATE THE INTEREST OF MONEY.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That the legal rate of interest shall be ten per centum per annum.

SEC. 2. Any rate of interest agreed upon by parties to a contract, specifying the same in writing, shall be valid and legal.

AN ACT RELATIVE TO ESTRAYS, AND OTHER UNCLAIMED PERSONAL PROPERTY.

SEC. 1. Notice to be given to the owner by any one taking up an estray.
2. When an animal may be taken up as a stray.
3. Notice, describing the stray, to be given.
4. Appraisal of stray to be made.
5. Owner of stray to have him restored.
6. Disagreement between owner and finder to be settled before justice of the peace.
7. Owner failing to apply for, stray to be sold.
Finder may bid.
Disposition of the proceeds.
8. Penalty for taking stray from the finder.
9. Penalty on finder for neglecting to attend to the requirements of this act.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That any person taking up any stray animal, shall within ten days thereafter, notify the owner thereof, if to him known, and request such owner to pay all reasonable charges, and take such stray away.

SEC. 2. No person shall take up any stray animal, unless such animal shall break into the enclosed grounds of the finder, or the animal shall be in such a condition as to need feed and care to preserve its life.

SEC. 3. If the owner of any stray be unknown, the finder shall, within ten days after taking up the same, file a notice thereof with the clerk of the board of county commissioners, and if the stray or strays so taken up are of the value of less than twenty-five dollars, he shall post up notices of the tating up of such stray, in two or more public places in such county; but if the stray or strays so taken up are of the value of more than twenty-five dollars, he shall cause such notice to be published in some newspaper of the county, for four successive weeks, if one be printed therein; if there be none, then by posting up written notices in three of the most public places in the county; all said notices shall contain a brief description of the stray, describing the same by giving marks, natural and artificial, as near as practicable; the name and residence of the finder, and, as near as may be, the time at which the same was taken up.

SEC. 4. Every finder of a stray or strays, which, when taken up, are of the value of ten dollars or more, shall, within one month after taking up the same, procure an appraisal thereof by a justice of the peace of his county, which appraisal shall be certified to by such justice, and, within the time before mentioned, filed in the office of the clerk of the board of county commissioners, and he shall pay to such justice one dollar for each appraisal and certificate, and ten cents for every mile necessarily traveled in such service.

SEC. 5. If the owner or person entitled to the possession of any stray, shall appear at any time within one year after the notice is filed with the clerk as aforesaid, and make out his right thereto, he shall have such stray restored to him, upon paying all lawful charges which have been incurred in relation to the same.

SEC. 6. If the owner and the finder of any stray cannot agree upon the amount of such charges, or for the use of any such stray, either party may make application to any justice of the peace of the county where such stray was taken up, to settle the same; and the party making such application shall give notice thereof to the other party, and if any amount shall be found due to the finder by the said justice, over the value of the use of such stray, the same shall be a lien on said stray until paid by the owner, and the costs of such adjudication shall abide the decision of the justice: *Provided*, That either party shall have the same right to appeal to the district court as in other cases.

SEC. 7. If the owner or person entitled to the possession of any stray, shall not appear and make out his title thereto, and pay the charges thereon, within one year from the time when the notice is filed with the county clerk, as provided in the fourth section of this chapter, such stray shall be sold at the request of the finder, by any constable of the precinct, at public auction, upon first giving public notice thereof, in writing, by posting up the same in three of the most public places in said precinct, at least ten days before such sale, and the finder may bid therefor at such sale; and, after deducting all the lawful charges of the finder as aforesaid, and the fees of the constable, which shall be the same as upon a sale on an execution, one-half of the remaining proceeds of such sale shall be deposited in the treasury of the county, to be applied to the common school fund of said county, the other half shall belong to the finder.

SEC. 8. If any person shall, without the consent of the finder, take away any stray, taken up pursuant to the provisions of this chapter, without first paying all the lawful charges incurred in relation to the same, he shall be liable to the finder for the value of such stray.

SEC. 9. If the finder of any stray shall neglect to cause the same to be advertised, or a notice thereof to be posted up, or if he shall neglect to procure the appraisal of any stray, which shall be of the value of ten dollars or more, or if he shall neglect to perform any of the duties required of him by this chapter, he shall be precluded from acquiring any right of property in such stray by the provisions of this chapter, or receiving any damages or charges for keeping the same, and shall forfeit and pay into the county treasury a sum equal to the value of the stray, to be sued for and recovered by the county treasurer, in the name of the county.

LOST MONEY AND GOODS.

SEC. 10. Notice to be given of finding money or goods of the value of five dollars.
11. Money or goods of the value of ten dollars or more, duty of the finder. Appraisal thereof.
12. Restitution may be made within one year.
13. No owner appearing, one-half the money to go into the county treasury.
14. Neglect to comply with this act to forfeit the money.

SEC. 10. If any person shall find any money or goods, of the value of five dollars or more, and if the owner thereof be unknown, such person shall, within five days after finding such money or goods, give notice thereof, in writing, to the clerk of the board of county commissioners, of the county in which such property was found, and shall, also, within said five days, cause a notice thereof to be posted up in two public places in said county.

SEC. 11. Every finder of lost goods of the value of ten dollars or more, shall, in addition to the requirements in the preceding section, within fifteen days after finding the same, cause notice thereof to be published in a newspaper printed in the county, if there be one published therein, and if there be none, then such notice shall be posted up in three of the most public places in the county; and if no person shall appear to claim the same, who may be entitled thereto, he shall, within two months after finding such goods, and before using the same to their injury, procure an appraisal thereof, by a justice of the peace of his county, which appraisal shall be certified to by such justice, and filed in the office of the clerk of the board of the county commissioners of such county.

SEC. 12. If the owner of such lost money or goods appear within one year after notice given to the clerk as aforesaid, and shall make out his right thereto, he shall have restitution of the same, or the value thereof, upon his paying all the costs and charges thereon, including a reasonable compensation to the finder for his trouble.

SEC. 13. If no owner shall appear within one year, then the finder of such lost money or goods shall pay one-half the value thereof, after deducting all legal charges, to the treasurer of the county, for school purposes; and in case such finder shall neglect to pay the same, on demand, after the expiration of the time aforesaid, the same may be sued for and recovered by the said treasurer, in the name of the county, for school purposes.

SEC. 14. If any finder of lost money or goods, of the value of five dollars or upwards, shall neglect to give notice of the same, and otherwise to comply with the provisions of this chapter, he shall be liable for the full value of such money or goods, one-half to the use of the county, for school purposes, and the other half to the person who shall sue for the same, and shall also be responsible to the owner for such lost money or goods.

CHAPTER II.

UNCLAIMED PROPERTY.

SEC. 1. Consignee to keep a description of property consigned.
2. Owner to be notified when property is not consigned.
3. Property not taken away in twelve months may be sold.
4. Notice to be given before sale of property.
5. Duty of person in possession, when property is not taken by the owner within sixty days.
6. Duty of the justice upon certificate, as above, being filed with him.
7. Constable to sell such property.
8. Constables return of sale of such property.
9. Disposition of the proceeds of such sale.
10. County treasurer to make entry of amount received, and file justice's statement.
11. Restitution to be made within five years.
12. Moneys not claimed within five years belong to the county.
13. Disposition of property of a perishable kind.
14. Fees of justices and constables under the provisions of this act.

SEC. 1. Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him, a description of such property, with the date of reception thereof.

SEC. 2. If such property shall not have been left with such consignee or bailee, for the purpose of being forwarded or disposed of according to directions received of such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him, and deposited in a post office, of the reception of such property.

SEC. 3. If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell the same, in the manner provided in this chapter.

SEC. 4. Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence, or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the territory; the last publication of such notice shall be at least eighteen days previous to the time of sale.

SEC. 5. If the owner or person entitled to such property shall not take the same away, and pay the charges thereon, after sixty days notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown.

SEC. 6. Upon the delivery to him of such affiavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order, under his hand, that the property therein described be sold by any constable of the precinct where the same shall be, at public auction.

SEC. 7. It shall be the duty of such constable receiving such inventory and order, to give ten days notice of the sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction, to the highest bidder, in the same manner as provided by law for sales under execution from justices' courts.

SEC. 8. Upon completing the sale, the constable making the same shall endorse upon the order aforesaid, a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceeds of sale, after deducting his fees.

SEC. 9. From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a rateable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person.

SEC. 10. The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement, so delivered to him by the justice.

SEC. 11. If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him.

SEC. 12. If the amount so deposited with any county treasurer shall not be claimed by the owner thereof, or his legal representatives, within the said five years, the same shall belong to the county, and shall be applied to the common school fund of said county.

SEC. 13. Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, the sale to be conducted, and the proceeds of the same to be applied in the manner before provided in this chapter: *Provided*, That any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in section six of this chapter.

SEC. 14. The fees allowed to any justice of the peace, under the provisions of this chapter, shall be three dollars for each day's service; and to any constable the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property.

AN ACT IN RELATION TO SCOWS, BOATS, SKIFFS, CANOES, AND OTHER WATER CRAFTS FOUND ADRIFT.

SEC. 1. Owner of boats found adrift to be notified.
2. How notice to be given, and what it shall be.
3. Where notice is not given personally.
Proceedings when taker up is traveling.
4. Compensation to person taking up.
When forfeited.
5. Disagreement of parties, how settled.
Owner to have possession on giving bond.
6. Taker up liable for use of boat, &c.
7. When craft is not claimed, to be sold.
How.
8. This act not to apply to property of indians.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person taking up any scow, boat, skiff, canoe, or other water craft, found adrift, and out of the custody of the owner, in any stream or body of water, within, or bordering upon this territory, shall forthwith notify the owner thereof, if to him known, or if upon reasonable inquiry he can ascertain the name and residence of the owner, and request such owner to pay all reasonable charges, and take such water craft away.

SEC. 2. Such notice shall be given personally, or in writing; if in writing, it shall be served upon the owner, or may be sent by mail to the post office where such owner usually receives his letters. Such notice shall inform the party where the scow, boat, skiff, canoe, or other water craft was taken up, and where it may be found, and what amount the taker up or finder demands for his charges.

SEC. 3. In all cases where notice is not given personally, it shall be the duty of the taker up to post up at the post office nearest the place where such scow, boat, skiff, canoe, or other water craft may be taken up, a written notice of the taking up of such water craft, which shall contain a description of the same, with the name, if any is painted thereon, also the place where taken up, the place where the property may be found, and the charge for taking the same up. If the taker up is traveling upon such stream or body of water, such notice shall be posted up at the first post office he shall pass after the taking up; and in all cases, he shall at the time when, and place where, he posts up such notice, also mail a copy of such notice, directed to the post master of each post office on said stream or body of water, and within fifty miles of the place where such water craft is taken up.

SEC. 4. Every person taking up any scow, boat, skiff, canoe, or other water craft, so found adrift, and giving the notice herein required, shall be entitled to receive from the owner claiming the property, a reasonable compensation for his time, services, expenses, and risk in taking up said property, and taking care of the same, to be settled by agreement between the parties. In case he has not, within ten days after the taking up, substantially complied with the provisions of this act, in giving the notice, he shall be entitled to no compensation, but shall be liable to all damages the owner may have suffered, and be also liable to the owner for the value of the use of said water craft, from the time of taking it up until the same is delivered to the owner.

SEC. 5. In case the parties cannot agree on the amount to be paid the taker up, or the ownership, and the sum claimed is less than one hundred dollars, the owner may file a complaint, setting out the facts, and the justice, on hearing, shall decide the same with a jury, or not, and in the same manner as is provided in ordinary civil actions before a justice of the peace.

If the amount claimed by the taker up is more than one hundred dollars, the owner shall file his complaint in the district court of the county where the property is, and trial shall be had as in other civil actions; but if the taker up claims more than one hundred dollars, and a less amount is awarded him, he shall be liable to all the costs in the district court; and in all cases where the taker up shall recover a less amount than has been tendered him by the owner or claimant, previous to filing his complaint, he shall pay the costs before the justice or in the district court: *Provided*, That in all cases the owner, after filing his complaint before a justice of the peace, shall be entitled to the possession of such water craft, upon giving bond, with security to the satisfaction of the justice, in double the amount claimed by the taker up. When the complaint is filed in the district court, the clerk thereof shall approve the security of the bond. The bond shall be conditioned to pay such costs as shall be awarded to the finder or taker up of such scow, boat, skiff, canoe, or other water craft.

SEC. 6. In case the taker up shall use the scow, boat, skiff, canoe, or other water craft, more than is necessary to put it into a place of safety, he shall be liable to the owner for such use, and for all damage; and in case it shall suffer injury from his neglect to take suitable care of it, he shall be liable to the owner for all damage.

SEC. 7. In case such water craft is of less value than one hundred dollars, and is not claimed within three months, the taker up may apply to a justice of the peace of the precinct where the property is, who, upon being satisfied that due notice has been given, and that the owner cannot, with reasonable diligence, be found, shall order the scow, boat, skiff, canoe, or other water craft to be sold, and after paying the taker up such sum as he shall be entitled to, and the costs, the balance shall be paid the county treasurer, as is provided in case of the sale of estrays. In case the scow, boat, skiff, canoe, or other water craft, exceeds one hundred dollars, and is not claimed within six months, application shall be made to the district court of the county, and the same proceedings shall be thereupon had.—All sales made under this section shall be conducted as sales of personal property on execution.

SEC. 8. No part of this act shall be construed as applying to indians, or to the property of indians.

AN ACT FOR THE PRESERVATION OF CLAMS, OYSTERS, AND OTHER SHELL FISH.

SEC. 1. Persons not residents not allowed to take clams, oysters, or other shell fish.
Penalty, how recovered.
2. Person instituting suit entitled to half amount recovered.
3. County auditor may grant license.
Form of license.
4. License to be recorded.
Amount paid to county treasurer.

SEC. 1. *Be it enacted by the Legislative Asssembly of the Territory of Washington,* That it shall not be lawful for any person, who is not at the time an inhabitant or resident of this territory, and who shall not have been for one month, next preceding, an inhabitant or resident aforesaid, to take, rake, or gather oysters, clams, or other shell fish, for sale or transportation, in any of the rivers, bays, or waters of this territory, under a penalty not exceeding one thousand dollars, nor less than three hundred dollars, for each offense, to be recovered from the person so offending by action of debt, brought by any person (competent to sue) in the district court for the county in which the offense was committed.

SEC. 2. The person instituting such suit shall be entitled to half the amount recovered, the other half to go to the territory.

SEC. 3. The county auditor may grant permits to any master or owner of a vessel, who has not been one month a resident of the territory, to take, rake, and gather oysters, clams, or other shell fish, in sufficient quantity to load such vessel, on flats unoccupied by residents for oyster beds, within their county, on the payment of two dollars per ton measurement of the vessel taking such oysters or other shell fish, and such auditor shall, on the application of any such master or owner of a vessel, and the payment of three dollars, make out and deliver to such applicant a permit, in the following form:

No.—. Date. ——— county. A. B., master (or owner, as the case may be,) of the ————, (naming her,) is hereby permitted to load the said ———— with oysters, clams, or other shell fish, to be taken from flats not occupied as oyster beds by residents of the territory.

Signed, C. D., county auditor.

Such license shall not be construed to give authority to load such vessel for more than one time.

SEC. 4. The county auditor shall enter each and every such permit in a book, to be provided for that purpose, and pay over to the county treasurer the amount received therefor, retaining the sum of three dollars as his fee for issuing such permit.

AN ACT TO REGULATE PEDDLING BOATS.

SEC. 1. No boat or scow for trade, &c., to be located or moored, without consent of proper authorities.
2. Owners of banks of rivers, &c., to have right of action.
3. Not to be construed to extend to Puget Sound or sea coast.
4. Suit how instituted.
5. When act to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall not be lawful for any boat, scow, or other floating craft, to locate, in any of the harbors or banks of the rivers of this territory, for the purpose of trade or keeping a grocery or eating house, or for the transaction of any other business than that of navigation and transportation of goods and passengers, without the consent of the proper authorities of harbors in which they may be moored, or to the owners of the land to which they may be attached. *Provided;* Nothing in this act shall be construed to extend to any sea-going vessel.

SEC. 2. All owners of banks of rivers, bays, ports, and sounds within this territory, in absence of corporations, shall have the same actions at law to protect his banks against the above named boats and other water crafts, that are given to protect his possession and enjoyment of other portions of his land.

SEC. 3. That nothing in this act shall be so construed as to prohibit the trade now pursued upon Puget Sound, or the sea coast of the territory.

SEC. 4. Suits may be brought against the owners of said boats without stating their names, if unknown to the plaintiff, and service shall be made upon the owners or persons in charge of such boats, and writs of attachment may issue as in civil cases.

SEC. 5. This act shall take effect and be in force from and after its passage.

AN ACT FOR THE ESTABLISHING OF A PILOTAGE ON THE COLUMBIA RIVER AND SHOALWATER BAY.

SEC. 1. Names of commissioners.
Powers and duties of such commissioners.
2. Pilots to give bond for $5,000.
3. Pilots may take charge of vessels, except such as are under one hundred tons burthen, and shall be paid for his services.

SEC. 4. Pilots to keep boats.
5. Commissioners authorized to fix the fees of pilots, and make other regulations.
6. When pilot to be held responsible for damages.
7. Master of a vessel not compelled to take a pilot.
When to pay one-half pilotage, when full pilotage.
8. Commissioners authorized to hear complaints against pilots, and determine thereon.
9. Penalties under this act to be tried in a court of record.
10. When master refuses, vessel liable for double pilotage.
11. Pilots carried away on vessels bound out, to be paid.
12. Compensation of commissioners.
13. Commissioners not to act as pilots.
14. When this act to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That James Johnson, William Strong, and D. K. Weldon shall constitute a board of commissioners, for the purpose of examining candidates for the pilotage of the Columbia river bar and Shoalwater bay, and may appoint one or more suitable persons, if they deem it necessary, to be pilots on the bar of the Columbia river and at Shoalwater bay, giving each of said pilots a branch or warrant for the execution of his office, with an authority to appoint deputies, in the cases to be specified in such branch or warrant: *Provided,* Each pilot shall report his said deputies for the approbation of the said board of commissioners: *Provided, also,* That whenever there shall occur a vacancy in said board of commissioners, such vacancy shall be filled by an appointment made by a majority of their own body.

SEC. 2. Every such pilot or deputy shall, before entering upon the duty of his or their office, give bond, with sufficient security, to the said board of commissioners, in the sum of five thousand dollars, for the faithful performance of his or their duties in office.

SEC. 3. Every such branch pilot is authorized and directed, by himself or his deputy, to take charge of any vessel requiring his services, bound into or out of the Columbia river or Shoalwater bay, but shall first show the master his warrant; but no vessel under one hundred tons burthen, engaged in the coasting trade of Washington or Oregon territory, shall be compelled to pay pilotage, unless the services of a pilot are required; and in all cases where the services of a pilot are required by the master of any vessel, said vessel shall be liable to pay the pilot his fees as specified in his warrant.

SEC. 4. The pilot or pilots shall always keep such boat or boats, to cruise out side the bar, as may be approved as suitable, by the power granting such branch or warrant.

SEC. 5. The said board of commissioners are authorized to determine the fees of pilotage, of the pilot or pilots by them appointed, and to specify the same in their respective warrants, and to direct and authorize all arrangements and operations that may be necessary to facilitate the navigation of the Columbia river and Shoalwater bay.

SEC. 6. If any vessel, while under the charge of a branch or warrant pilot, or his deputy, shall be lost or run aground, or sustain any damage through the negligence or unskillfulness of such pilot or deputy, such pilot shall be liable, both for himself and his deputy, to pay all damages sustained by any person interested in said vessel, or her cargo, and may, moreover, be removed from his office.

SEC. 7. No master of any vessel bound into or out of Columbia river or Shoalwater bay, shall be compelled to take a pilot, but the vessel over one hundred tons burthen shall be liable to pay half pilotage, in and out, to the pilot first offering his services; but when the services of any pilot is required by the master of any vessel bound into or out of Shoalwater bay or Columbia river, said pilot shall take charge of such vessel, first exhibiting his authority, and shall be entitled to charge and receive the fees as allowed by his warrant.

SEC. 8. The board of commissioners are authorized to hear and determine all complaint exhibited against the pilots appointed by them as aforesaid, and their deputies, and to suspend or remove them, and appoint others in their place.

SEC. 9. That all penalties, forfeitures, and complaints, incurred under this act, shall be tried and determined in any court of record having cognizance of the same.

SEC. 10. Should any ship master omit or refuse to pay the pilotage fees in any instance, when by this law he has become liable, then the vessel, or owners of such vessel, shall be liable to pay double the amount of such pilotage.

SEC. 11. That if a pilot, acting under the provisions of this act, shall have boarded any vessel outward bound, and shall be detained on board said vessel and carried out to sea, or to any foreign port, the officers of said vessel so detaining said pilot, shall be liable to pay the pilot so detained, a compensation equal to the pay of the highest officer on board of said vessel, for all the time he shall be so detained from his proper port.

SEC. 12. The said board of commissioners, hereby created, shall be entitled to receive three dollars per day for their services, spent in the performance of the duties assigned them by this act, to be paid out of the treasury of this territory, upon a warrant of the auditor, who is hereby required to audit and allow the same.

SEC. 13. No member of said board of commissioners shall be allowed to act as pilot over the bar of the Columbia river or Shoalwater bay.

SEC. 14. This act to take effect and be in force from and after its passage.

LIENS OF MECHANICS AND OTHERS FOR LABOR AND MATERIALS.

SEC. 1. Labor done or materials furnished, a lien on the property.
2. Notice of lien to be filed and recorded in auditor's office within sixty days.
3. Sub-contractor or journeyman may have a lien.
4. How a lien may be enforced.
5. Trial of liens.
Judgment and sale of the property.
When property may be removed by purchaser.
Several actions may be consolidated.
6. Pro rata division of the proceeds may be made.
7. Bond may be filed to release property, by defendant.
8. Satisfaction of demand to be entered.
Penalty for failure.
9. Sub-contractor's lien may be a set off.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That mechanics, and all persons performing labor, or furnishing materials for the construction or repair of any building, may have a lien, separately or jointly, upon the building which they may have constructed or repaired, or upon any building, mill, or other manufactory, for which they may have furnished materials of any description, and on the interest of the owner in the lot or land on which it stands, to the extent of the value of any labor done, or materials furnished, or for both, when the amount shall exceed fifty dollars.

SEC. 2. Any person wishing to acquire such lien, whether his claim be due, or not, shall file in the recorder's office of the county in which such building is situated, at any time within sixty days after the completion of such building or repairs, a notice of his intention to hold a lien upon such building, for the amount due, or to become due, specifically setting forth such amount, and containing a description of the building upon which the labor was performed, or for which the materials were furnished, which notice shall be recorded by the auditor, in a book to be kept for that purpose.

SEC. 3. Any sub-contractor, journeyman, or laborer, employed in the construction or repair, or furnishing materials for any building, may give to the owner thereof notice in writing, particularly setting forth the amount of his claim and service rendered, for which his employer is indebted to him, and that he holds the owner responsible for the same; and the owner shall be liable for such claim, but not to exceed the amount due from him to the employer at the time of notice, which may be recovered in an action.

SEC. 4. Any person having such lien may enforce the same, by filing his complaint in the district court of the county where the work was done, or materials furnished, at any time within one year from the completion of the work, or furnishing materials; or, if a credit be given, from the expiration of the credit.

SEC. 5. In such actions, all persons whose liens are recorded, as herein provided, may be made parties, and all, or any number, may join in one action, stating their claims distinctly, and issues shall be made up, and trials had, as in other cases; and the court may, by the judgment, direct a sale of the defendant's interest in the lot or land (if he have any such saleable interest,) and building, for the satisfaction of the lien or liens, and costs; such sale to be under and by virtue of an execution, and without prejudice to the rights of any prior incumbrance, owner, or other persons, not parties to the action. If the defendant or defendants in such action be not entitled to such interest in the lot or land, on which such building is erected, as is liable to sale under execution, then the purchaser, at the sale herein provided for, shall be entitled to remove from the premises such property, so sold by execution, and purchased. If several such actions be brought by different claimants, and be pending at the same time, the court may order them to be consolidated.

SEC. 6. If the proceeds of the sale be insufficient to pay all the claimants, then the court shall order them to be paid in proportion to the amount due each, and any other property of the owner of the building may be taken and sold on execution to satisfy the same.

SEC. 7. In all proceedings to enforce liens, the defendant may file a bond with surety, to be approved by the court, to the effect that he will pay the judgments that may be recovered, and costs, and thereby release his property from the liens hereby created.

SEC. 8. Whenever any person, having a lien by virtue of the provisions of this act, shall have received satisfaction for his claim, and the costs of his proceedings thereon, he shall, upon the request of any person interested, and upon the payment or tender of the costs of entering satisfaction, within six days after such payment or tender, enter satisfaction of his demand in the office where the same is recorded; and upon failure to do so, he shall forfeit fifty dollars to the party aggrieved, and all damages which he may have sustained in consequence of such failure or neglect.

SEC. 9. Whenever any sub-contractor, journeyman, or laborer, shall recover any such claim from the owner of the building, the same may be set off by such owner in any action brought against him by the person who otherwise would be entitled to recover the same, under the contract.

LIENS ON PERSONAL PROPERTY.

SEC. 10. How lien on personal property is acquired.
Claimant may hold possession.
11. Lien of a carrier, or one who feeds animals.
Claimant may hold possession.
12. Sale of property under lien.
Notice to be given.

Sec. 13. Proceedings where property is of a perishable nature.
14. Disposition of the proceeds of such sale.
15. Proof of notice to be filed and kept.

Sec. 10. Any person who shall make, alter, repair, or bestow labor on any article of personal property, at the request of the owner or lawful possessor thereof, shall have a lien on such property, so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed, and the materials he has furnished; and such person may hold and retain possession of the same, until such just and reasonable charges shall be paid.

Sec. 11. Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another, and any person who shall safely keep or store any personal property, at the request of the owner or lawful possessor thereof, and any person who shall depasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care, or attention upon the same, at the request of the owner or lawful possessor thereof, shall have a lien upon such property, for his just and reasonable charges for the labor, care, and attention he has bestowed, and the food he has furnished, and he may retain the possession of such property until such charges be paid.

Sec. 12. If such just and reasonable charges be not paid within three months after the care, attention, and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell, at public auction, the property mentioned in the last two sections, or a part thereof, sufficient to pay such just and reasonable charges. He shall, before such sale, give public notice of the time and place thereof, by posting a written notice for at least ten days, in three public places in the county, precinct, town, or city where he resides, one of which shall be in some conspicuous part of his shop or place of business; or if the value of the article be fifty dollars or more, then by publishing the same three weeks successively in a newspaper in the county, if any, in addition to the notices herein required to be posted.

Sec. 13. If the property be horses, cattle, hogs, or other live stock, and in all cases embraced in this act, where the property is of a perishable nature, and will be greatly injured by delay, the person to whom such charges may be due, may, after the expiration of twenty days from the time when such charges shall have become due, proceed to dispose of so much of such property as may be necessary, as hereinbefore provided.

Sec. 14. The proceeds of such sales, after the payment of the lien, all charges for keeping and selling such property, shall, if the owner be absent, be deposited with the treasurer of the proper county by the person making such sale, he taking the treasurer's receipt therefor, and shall be subject to the order of the person legally entitled thereto.

SEC. 15. Attested copies of the notices required by this act, and proof of the publication thereof, and an affidavit of the person claiming the lien, or some competent witness on his behalf, setting forth his claims, shall be filed and kept in the recorder's office of the proper county, and the same, or copies thereof, attested and sealed by such clerk, shall be received as testimony, and shall be presumptive evidence of the matter therein contained.

Passed April 22, 1854.

AN ACT RELATING TO THE SUPPORT OF THE POOR.

SEC. 1. Boards of county commissioners vested with the superintendence of the poor.
2. By whom poor to be supported.
Penalty for refusal to support the poor.
Proviso.
3. Who to be first called on.
Married females not to be sued.
4. When poor to be supported by the county.
5. Provisions for a non-resident pauper.
7. Residence of pauper to be proven.
8. Resident entitled to relief.
Non-resident to be removed; how.
9. After service of notice to leave the county, pauper not to be relieved.
10. Work houses may be built under the control of the county commissioners.
11. Penalty for bringing a pauper into the territory.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the boards of county commissioners of the several counties of this territory, are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

SEC. 2. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters, of such poor person, if they or either of them be of sufficient ability; and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, grandchild, sister or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county, for for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor as aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided*, That when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support from any relation except parent and child.

SEC. 3. The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none, the parents of such poor persons shall be next called on, and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on; and if there be no brothers and sisters, the grand children of such poor person shall be called on, and then the grandparents; but married females whilst their husbands live shall not be liable to a suit.

SEC. 4. When any poor person shall not have relatives in any county in this territory, as are named in the preceding sections, or such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require, out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

SEC. 5. When any minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the parents, or other relations, as aforesaid, are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects be to the tenor and effect as required in the act concerning apprentices.

SEC. 6. When any non-resident, or any other person not coming within the definition of a pauper, shall fall sick in any county in this territory, not having money or property to pay his board, nursing or medical aid, it shall be the duty of the commissioners of the proper county, on complaint being made, to give or order to be given, such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said commissioners shall give or order to be given to such person a decent burial; and the said commissioners shall make such allowance for board, nursing, medical aid, or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

SEC. 7. When the application is made by any pauper, to the board of county commissioners of any county in this territory, for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he has been a resident of said county for twelve months, immediately preceding the day upon which such application was made.

SEC. 8. When application is made by any pauper to the board of county commissioners as aforesaid, it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section of this act, he shall be entitled to all the relief provided by this act; but if on the contrary it shall appear to the satisfaction of said board, that such pauper has not been a resident of said county agreeably to the provisions of seventh section, they shall proceed to remove from their county, at the expense of said county, such pauper to the county where such pauper may have his residence, or may, if they think best, issue a notice directed to some constable of the county; which notice said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county, and after so serving said notice by reading the same to said pauper, said constable shall, within five days thereafter, return the same to the said clerk of the board of county commissioners, issuing the same, noting the time and manner of service.

SEC. 9. After service of such notice as aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners shall deem it absolutely necessary.

SEC. 10. The board of county commissioners of any county in this territory may, if they think proper, cause to be built or provided in their espective counties, work-houses for the accommodation and employment of such paupers, as may from time to time become a county charge; and said work-house and paupers shall be under such rules and regulations as said board of commissioners may deem proper and just.

SEC. 11. If any person shall bring and leave any pauper in any county in this territory, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by, and to the use of such county, in a civil action before any court having jurisdiction of the same.

AN ACT REGULATING THE RATES OF TOLL FOR GRINDING GRAIN.

SEC. 1. One eighth allowed as toll.
Proviso.
2. Duties of owner and occupiers of mills.
3. Owner of mill not chargeable with unavoidable losses.
4. Penalty for disobedience to this act.
5. Owner to assist in carrying grists.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That the owners or occupiers of all mills in this territory, moved by water or other power, shall be entitled to one eighth part of all wheat, rye or other grain, ground and bolted, or ground and not bolted, and no more : *Provided however,* said owner or occupier shall not be permitted to grind his own grain to the exclusion of other grists, when said mill is used and occupied as a grist mill.

SEC. 2. The owner or occupier of any grist mill, shall well and sufficiently grind the grain brought to his mill for that purpose in due time, and in the order in which it shall be received, and shall be accountable for the safe keeping of all grain received in such mill, for the purpose of being ground therein, and shall deliver, when ground, or ground and bolted, as the case may be, with the bag or cask in which it was brought, when demanded, but every owner or occupant of a mill may grind his own grain at any time ; and nothing in this section contained, shall be construed to compel the owners or occupants of mills to grind for sale or merchant work.

SEC. 3. Nothing contained in the preceding section shall be so construed as to charge the owner or occupant of any mill, for the loss of any grain, bag or cask, which shall happen by robbery, fire or inevitable accident, without the fault of such owner or occupant, his agents or servants.

SEC. 4. Every miller, or owner or occupant of a grist mill, who shall not well and sufficiently grind any grain as aforesaid, or not in due turn, as the same shall be brought, or who shall exact or take more toll than is herein allowed, shall, in every such case, be liable to a fine of not less than three nor more than twenty dollars, and shall also be liable to the party injured in double the actual damages sustained by him.

SEC. 5. That every owner or occupier of such grist mill shall assist in carrying grists in and out of said mill, when the owner of such grist is unable to do the same.

Passed April 14, 1854.

AN ACT RELATIVE TO WEIGHTS AND MEASURES.

SEC. 1. Certain scales and beams made standards.
2. Treasurer of territory shall be sealer of weights and measures of territory, and county treasurers of their county.
3. How hundred weight shall be construed.
4. Measure of bushel shall be by weight, and weight of articles computed.
5. Legal contents of the bushel, and regulating the custom of measuring commodities sold by heaped measure.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the weights and measures, together with the scales and beams, and those made in conformity therewith, which are now or may be hereafter deposited in the treasury of this territory, shall be preserved by the treasurer, and be the public standard in this territory.

SEC. 2. The treasurer of the territory shall be the sealer of weights and measures, and he shall have and keep a seal, which shall be so formed as to impress the letters W. T. upon the weights and measures, scales and beams, to be sealed by him, with which he shall seal all such authorized public standards of weights and measures, and all the weights and measures, scales and beams, to be provided by the several counties, when examined by said treasurer, and found to be in conformity with the standard weights and measures, scales and beams aforesaid, and the treasurer of each county shall be the sealer of weights and measures for said county, and he shall provide a suitable seal and seal all weights and measures brought to him for that purpose, when the same are found to be in conformity with the legal standards.

SEC. 3. When any commodity shall be sold by the hundred weight, it shall be understood to mean the nett weight of one hundred pounds avoirdupoise, and all contracts concerning goods and commodities, sold by weight, shall be construed accordingly, unless such construction would be manifestly inconsistent with the special agreement of the parties contracting.

SEC. 4. Whenever wheat, rye, indian corn, oats, barley, clover seed, buckwheat, dried apples, dried peaches, potatoes, or onions, shall be sold by the bushel, and no special agreement as to the measure or weight thereof shall be made by the parties, the measure thereof shall be ascertained by weight, and shall be computed as follows:

Sixty pounds for a bushel of wheat or clover seed;
Fifty-six pounds for a bushel of rye or indian corn;
Thirty-six pounds for a bushel of oats;
Forty-five pounds for a bushel of barley;
Forty-two pounds for a bushel of buckwheat;
Twenty-eight pounds for a bushel of dried apples or dried peaches;
Sixty pounds for a bushel of potatoes;
Fifty pounds for a bushel of onions, turnips, beets and other vegetable roots.

SEC. 5. Two thousand one hundred and fifty, and forty-two one hundredths cubic inches, shall be the contents of the legal bushel within the meaning of this act, and the half bushel and parts thereof, shall be the standard measure for charcoal, fruits, and other commodities customarily sold by heaped measure, and in measuring such commodities, the half bushel or other smaller measure shall be heaped as high as may be, without special effort or design.

AN ACT IN RELATION TO BILLS OF EXCHANGE AND PROMISSORY NOTES.

SEC. 1. All promissory notes to have the same effect as inland bills of exchange.
2. Note signed by agent to bind principal.
3. Construction of word "person."
4. Who may maintain actions on such notes.
In what manner.
5. Notes payable to the maker thereof, or to a fictitious person.
6. Days of grace.
7. What days considered as Sunday.
8. Acceptance to be in writing.
9. Acceptance written on a paper other than a bill.
When binding.
10. When a promise to accept made before the bill is drawn, deemed an acceptance.
11. Holder may require the acceptance to be written on the bill.
12. Last four sections not to be construed to impair the right of the party to whom promise to accept was made to recover damages.
13. Drawee destroying a bill or refusing to deliver it, deemed to have accepted it.
14. Rate of damages upon protest.
15. What such damagesin lieu of.
What additional damages holder may recover.
16. This act not to apply to bills &c., drawn or made before its passage.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all notes in writing made and signed by any person whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange according to the custom of merchants.

SEC. 2. Every note signed by the agent of any person, under a general or special authority, shall bind such person and have the same effect, and be negotiable as provided in the preceding section.

SEC. 3. For the purposes of this act, the word person shall be construed to extend to every corporation capable by law of making contracts.

SEC. 4. The payees and endorsees of every such note, payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, against the makers and endorsers of the same respectively, in like manner as in cases of inland bills of exchange and not otherwise.

Sec. 5. Such notes made payable to the maker thereof, or the order of a ficticious person, shall, if negotiated by the maker, have the same effect and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to the bearer.

Sec. 6. On all bills of exchange payable at sight, or at a future day certain within this territory; and on all negotiable promissory notes, orders, and drafts payable at a future day certain within this territory, in which there is not an express stipulation to the contrary, three days grace shall be allowed by the custom of merchants on foreign bills of exchange, payble at the expiration of a certain period after date, or at sight.

Sec. 7. The fourth day of July, and the twenty-fifth day of December, shall, for all purposes whatsoever as regards the presenting for payment or acceptance and of the protesting and giving notice of the dishonor of bills of exchange, promissory notes, drafts and checks, be treated and considered as Sunday.

Sec. 8. No person within this territory shall be charged as an acceptor of a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

Sec. 9. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

Sec. 10. An unconditional promise in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of every person who, upon the faith thereof, shall have received the bill for a valuable consideration.

Sec. 11. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill; a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

Sec. 12. The last four sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, or his refusal to accept such bill.

Sec. 13. Every person, upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted, or non-accepted, to the holder, shall be deemed to have accepted the same.

Sec. 14. The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange drawn or endorsed within this territory, if payable without the limits of the United States, shall be ten per cent. upon the contents thereof; and if such bill be payable out of this territory, but within some state or territory of the United States, such rate of damages shall be five per cent. upon the contents thereof.

SEC. 15. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of giving notice of non-payment, but the holder of such bill shall be entitled to demand and receive lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given, and payment demanded.

SEC. 16. Nothing in this act shall apply to bills of exchange, promissory notes, or other negotiable instruments made or drawn before the passage of this act.

Passed March 20, 1854.

AN ACT RELATING TO DEEDS.

SEC. 1. All conveyances or contracts relating to real estate or interest therein, must be by deed.
2. Requisites of a deed.
3. Release of married woman of dower, and requisites of acknowledgment.
4. Deeds, how and where to be recorded.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all conveyances of real estate, or of any interest therein, and all contracts creating or evidencing any encumbrance upon real estate, shall be by deed.

SEC. 2. A deed shall be in writing, signed and sealed by the party bound thereby, witnessed by two witnesses, and acknowledged by the party making it before a judge of the supreme court, a judge of the probate court, a justice of the peace or a notary public.

SEC. 3. A married woman shall not be bound by any deed affecting her own real estate or releasing dower, unless she shall be joined in the conveyance by her husband, and shall, upon an examination by the officer taking the acknowledgment, separate and apart from her husband, acknowledge that she did voluntarily, of her own free will, and without the fear of or coercion from her husband, execute the deed, and the officer shall make known to her the contents of the deed, and shall certify that he has made known to her its contents and examined her separate and apart from her husband, as is above provided.

SEC. 4. All deeds shall be lodged for record in the office of the recorder of deeds of the county where the land is situated, within six months from the time when they are executed and delivered, and unless so lodged for record within six months, they shall not be valid as against bona fide purchasers without notice, and when so lodged it shall be notice to all the world.

Passed April 28, 1854.

AN ACT TO PREVENT FRAUDULENT CONVEYANCES.

SEC. 1. Certain conveyances void as against existing or subsequent creditors.
2. Certain contracts void, unless some note or memorandum thereof be in writing.
3. Sale of goods &c., to the value of fifty dollars or more when valid.
4. When bill of sale invalid.
When binding.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods chattels or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors, of such person.

SEC. 2. In the following cases specified in this section, any agreement, contract and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized ; that is to say :

1st. Every agreement that by its terms is not to be performed in one year from the making thereof ;

2d. Every special promise to answer for the debt, default, or misdoings of another person ;

3d. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

4th. Every special promise made by an executor or administrator, to answer damages out of his own estate.

SEC. 3. No contract for the sale of any goods, wares, or merchandise, for the price of fifty dollars or more, shall be good and valid, unless the purchaser shall accept and receive part of the goods so sold, or shall give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing of the bargain be made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

SEC. 4. No bill of sale for the transfer of personal property, shall be valid as against existing creditors or innocent purchasers, where the property is left in the possession of the vendor, unless the said bill of sale be recorded in the auditor's office of the county in which the property is situated, within ten days after such sale shall be made.

Passed March 21, 1854.

AN ACT TO REGULATE MARRIAGES.

SEC. 1. Marriage a civil contract.
2. What marriages are void.
3. What children shall be legitimate.
4. Who may join parties in marriage.
5. Persons not to be married without consent.
6. Marriages not void when either party acts in good faith.
7. Certificate of marriage to be filed, recorded &c.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington*, That marriage is declared to be a civil contract.

SEC. 2. The following marriages are declared void:

1st. When either party had a wife or husband living at the time of such marriage.

2d. Where either of the parties are nearer of kin than first cousins, computing according to the rules of the civil law, whether of the whole or half blood: *Provided*, That when the parties whose marriage is void under the causes in this section mentioned, shall continue to live together as man and wife after such disability is removed, such marriages shall be valid to all intents and purposes.

SEC. 3. All children born of marriages declared void by the preceding section, and all children born of persons living and cohabiting together, as man and wife, and all children born out of wedlock whose parents shall intermarry, shall for all purposes be legitimate.

SEC. 4. Ministers of the gospel, clergymen and priests and judges of the supreme court may join parties in marriage throughout this territory; and judges of the probate court, and justices of the peace within their respective counties, and parties may be joined in marriage by the society of friends according to the rules of their society: *Provided*, That no marriage, legal in other respects, shall be void on account of the incapacity of the person joining parties in marriage.

SEC. 5. Males under the age of twenty-one, and females under the age of eighteen, shall not be joined in marriage without the consent of the parents, guardian or other person under whose government such minor may be.

SEC. 6. No marriage shall be void or voidable for the want of any formality required by law, if either of the parties thereto believed it to be a legal marriage at the time.

SEC. 7. Every person who shall join persons in marriage by virtue of the provisions of this act, shall, within three months thereafter, under a penalty of not less than twenty nor more than one hundred dollars for each and every neglect, file a certificate in the office of the clerk of the probate court of the county in which such persons were joined in marriage, which certificate shall by such clerk be recorded, and a certified copy thereof shall be evidence of such marriage.

AN ACT REGULATING DIVORCES.

SEC. 1. Divorces may be granted by the district court.
For what causes.
2. When either party may obtain a decree of divorce.
3. Resident may apply for a divorce.
Proceedings.
4. Proof to be required before granting a divorce.
5. Cross complaint may be filed.
Divorce to either party.
6. Both parties considered as applying for a divorce.
7. Disposition of property &c., pending a petition for divorce.
Husband may be required to pay costs &c.
8. Upon granting a divorce, duty of the court.
9. Both parties to be divorced by the decree.
Name of the female to be changed.
10. Prosecuting attorney to defend petition for divorce; when.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That divorces may be granted by the district court, on application of the party injured, for the following causes:

1st. When the consent to the marriage of the party applying for the divorce was obtained by force or fraud, and there has been no subsequent voluntary co-habitation;

2d. For adultery on the part of the wife, or of the husband, when unforgiven, and application is made within one year after it shall come to his or her knowledge;

3d. Impotency;

4th. Abandonment for one year;

5th. Cruel treatment of either party by the other;

6th. Habitual drunkenness of either party, or the neglect or refusal of the husband to make suitable provisions for his family;

7th. The imprisonment of either party in the penitentiary, if complaint is filed during the term of such imprisonment. And divorce may be granted on application of either party for any other cause deemed by the court sufficient, or where the court shall be satisfied that the parties can no longer live together.

Sec. 2. When there is any doubt as to the facts rendering a marriage void, either party may apply for, and on proof obtain a decree of nullity of marriage.

Sec. 3. Any person who has been a resident of the territory for one year may file his or her complaint for a divorce or decree of nullity of marriage under oath in the district court of the county where he or she may reside, and like proceedings shall be had thereon as in civil cases.

Sec. 4. When the defendant does not answer, or answering, admits the allegations in the complaint, the court shall require proof before granting a divorce or a decree of nullity.

Sec. 5. The defendant may, in addition to his or her answer, file a cross complaint for divorce, and the court may in such case grant a divorce, if any, in favor of either party or as on application of both.

Sec. 6. Both parties shall be considered as applying for a divorce, when the complaints of both are filed at the same term of the district court, and when the defendant by his or her cross complaint also for a divorce.

Sec. 7. Pending a petition for divorce, the court or the judge thereof, in vacation, may make and by attachment enforce such orders for the disposition of the persons, property and children of the parties as may be deemed right and proper, and such orders relative to the expenses of such suit as will ensure to the wife an efficient preparation of her case, and a fair and impartial trial thereof; and on decreeing or refusing to decree a divorce, the court may, in its discretion, require the husband to pay all reasonable expenses of the wife in the prosecution or defence of the petition, when such divorce has been so granted or refused, and give judgment therefor.

Sec. 8. In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody and support and education of the minor children of such marriage.

SEC. 9. Whenever an order of divorce from the bonds of matrimony is granted in this territory by a court of competent authority, such order shall fully and completely dissolve the marriage as to both parties. And in all suits for a divorce, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court shall in its order or decree appoint.

SEC. 10. Whenever a petition for divorce remains undefended, it shall be the duty of the prosecuting attorney to resist such petition.

AN ACT TO FIX THE AGE OF MAJORITY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That males shall be deemed and taken to be of full age for all purposes at the age of twenty-one years and upwards; females shall be deemed and taken to be of full age at the age of eighteen years and upwards.

SEC. 2. All females married to a person of full age shall be deemed and taken to be of full age.

Passed April 28, 1854.

AN ACT OFFERING A BOUNTY FOR KILLING WILD ANIMALS.

SEC. 1. Commissioners of each county may offer a bounty for killing wild animals.
2. Scalp of the animal to be proven.
3. Justice of the peace to give a certificate and destroy the scalp.
4. Certificate to pay taxes in the county in which the animal was killed.
5. When this act to take effect.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That the county commissioners of each and every county may, if they think proper, offer a bounty for killing wild animals.

SEC. 2. That before any person shall be entitled to receive any bounty offered by any commissioners court of the proper county, the person claiming to have killed the said animal or animals, shall go before a justice of the peace of the county where said animal, or animals, was killed, and make oath that the scalp, with two ears thereto, is the scalp of the animal or animals killed by him, within the limits of the said county, and the time when killed.

SEC. 3. It shall be the duty of the justice of the peace before whom any person shall appear with a scalp of any of the animals allowed by the commissioners court, after administering to said person the oath above specified, and upon the said justice being satisfied that the said person is the person who killed said animal, to give said person a certificate, as follows:

This certifies that A. B., (here name the person who killed the animal,) on or about (here state the date of killing the animals,) killed (here describe or name the animal,) in the county of (here name the county,) for which he is entitled to the sum of —— dollars, or cents, out of any money in the county treasury not otherwise appropriated.

Given under my hand this date ———.

J. A., justice of the peace.

And the said justice of the peace is requested forthwith to destroy the scalp.

SEC. 4. Said certificate or bounty shall be paid out of any money in the county treasury of the county in which said certificate shall be issued, and shall be a legal tender for the amount specified in said certificate, to the collection of the county revenue, in the payment of county tax, and no certificate shall issue to any person for killing any of the aforesaid animals, only in the county where said animals shall be killed, and shall not be received in payment of taxes, or paid in any other county, but the county in which said certificate shall issue.

SEC. 5. This act shall take effect from and after its passage.

AN ACT CREATING THE OFFICE, AND DEFINING THE DUTIES OF TERRITORIAL AUDITOR.

SEC. 1. Auditor to be elected by the legislature.
His term of office.
2. Residence, bond, and oath of auditor.
3. Auditor declared general accountant of the territory.

SEC. 4. Duty of the auditor as to reports.
5. General duties of the auditor.
6. Accounts to be presented to the auditor before first Monday in November, and audited without delay.
7. Provisions for delinquents.
8. Limitation of time for claims against the territory.
In suits against the territory, what claims allowed as set off.
9. Auditor authorized to examine witnesses on oath.
10. Preservation of accounts and vouchers by auditor.
11. When warrants may be drawn on the treasury.
12. Appeals may be taken from the auditor's decision to the legislature.
13. Auditor to certify and report claims.
When.
14. Auditor's report to the legislature.
15. Salary of auditor.
16. Books and papers of auditor to be inspected.
17. Auditor authorized to administor oaths.
18. Auditor to keep and use a seal of office.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That there shall be elected at this session of the legislative assembly, and annually thereafter, by joint ballot of the council and house of representatives, a territorial auditor, who shall be commissioned by the governor, and shall hold his office for the term of one year, and until his successor is elected and qualified.

SEC. 2. The territorial auditor shall reside and keep his office at the seat of government, and before entering upon his duties, shall execute and deliver to the governor a bond to the territory, in the sum of one thousand dollars, to be approved by him, conditioned for the faithful performance of all duties required, or which may be required of him by law, and take an oath of office before some judge or justice of the peace within the territory, to be endorsed on his commission, and file a copy thereof, together with his bond, in the office of the secretary of the territory.

SEC. 3. The auditor of public accounts is declared to be the general accountant of the territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the territory, and its revenue, debt, and fiscal affairs, not required by law to be placed in some other office, or kept by some other person.

SEC. 4. It shall be the duty of the auditor to digest, prepare, and report to the legislative assembly, at the commencement of each annual session—

1st. A full and detailed statement of the condition of the revenues, and the amount of the expenditures for the fiscal last year.

2d. A full and detailed statement of the public debt.

3d. Estimates of the revenue and expenditures for the next succeeding year.

4th. Such plans as he may deem expedient for the support of public credit; for lessening the public expenses; for using the public money to the best advantage; for promoting frugality and economy in public offices; and generally, for the better management and more perfect understanding of the fiscal affairs of the territory.

5th. A tabular statement, showing, separately, the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended.

6th. A tabular statement, showing separately the amount of money received into the treasury, from all sources, in the preceding fiscal year; the amount received from each county, and each source of revenue in each county.

Sec. 5. It shall be the duty of the auditor—

1st. To audit, adjust, and settle all claims against the territory, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers or persons.

2d. To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law.

3d. To express in the body of every warrant which he may draw upon the treasury, the particular fund appropriated by law, out of which the same is to be paid.

4th. To audit, settle, and adjust the accounts of all collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury.

5th. To keep an account between the territory and the territorial treasurer.

6th. To keep an account of all debts and credits between the territory and the United States.

7th. To direct prosecutions, in the name of the territory, for all official delinquencies, in relation to the assessment, collection, and payment of the revenue, against all persons who by any means become possessed of public money or property, and fail to pay over or deliver the same, and against all debtors of the territory.

8th. To procure from the proper officers an abstract and description of all taxable lands within the territory, not yet procured, and annually hereafter, abstracts and descriptions of such lands as shall become taxable.

9th. To transmit to the clerk of each county commissioners' court, annually, a descriptive list of all taxable lands in such county.

10th. To give information, in writing, to either house of the legislative assembly, whenever required, upon any subject relating to the fiscal affairs of the territory, or touching any duty of his office.

11th. To furnish offices for himself and the territorial treasurer, and all books, papers, blanks, and forms, required by law for the proper discharge of the duties of their offices, and to furnish the proper forms, through the auditors of the counties, to assessors, treasurers, and sheriffs, and such auditors.

12th. To perform all such other duties as may be required by law.

SEC. 6. All persons required by law to pay money directly into the treasury of the territory, shall, unless otherwise provided, exhibit their accounts and vouchers to the auditor, on or before the first Monday in November, in each year, to be audited, adjusted, and settled; and the auditor shall proceed, without any unnecessary delay, to audit, adjust, and settle the same, and report to the treasurer the balance found due.

SEC. 7. If any person, so required by law to pay money into such treasury, shall fail to pay the amount so found due into the treasury, and produce the treasurer's receipt to the auditor, within ten days after the settlement above required, the delinquent shall forfeit to the territory the amount of his commission allowed him by law; and, also, two and a half per cent. a month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid, until actual payment; and the auditor shall charge such delinquent accordingly, and the whole amount of principal and forfeiture may be recovered by action on the official bond of the delinquent, or otherwise, according to law.

SEC. 8. All persons having claims against the territory, shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled, and allowed within two years after such claim shall accrue, and not afterwards. And in all suits brought in behalf of the territory, no debt or claim shall be allowed against the territory as a set off, but such as have been exhibited to the auditor, and by him allowed or disallowed, except only in cases where it shall be proved to the satisfaction of the court that the defendant, at the time of trial, is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor, by absence from the territory, sickness, or unavoidable accident.

SEC. 9. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses, and others, on oath or affirmation, touching any matter material to be known in the settlement of such account; and for that purpose may issue writs of summons, and compel witnesses to attend before him, and give evidence in the same manner, and by the same means, allowed by law to courts of record.

SEC. 10. All accounts, vouchers, and documents, settled or to be settled by the auditor, shall be preserved in his office, and copies thereof, authenticated by the official seal, shall be given to any person interested therein, who shall require the same.

SEC. 11. In all cases of grants, salaries, pay, and expenses, ascertained and allowed by law, found due to individuals from the territory, when audited, the auditor shall draw warrants upon the treasury for the amount, in the form used in the treasury department; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrant shall be drawn by the auditor, or paid by the treasurer, unless the previous appropriation shall have been made by law for that purpose; nor shall the whole amount drawn for and paid under any one head, ever exceed the amount thus appropriated.

SEC. 12. If any person interested shall be dissatisfied with the decision of the auditor on any claim, account, or credit, it shall be the duty of the auditor, at the request of such person, to refer the same, with the reasons of his decision, to the legislative assembly.

SEC. 13. In all cases where the laws recognize a claim for money against the territory, and no appropriation shall be made by law to pay the same, the auditor shall audit and settle the same, and give the claimant a certificate of the amount thereof, under the official seal, if demanded, and shall report the same to the legislative assembly with as little delay as possible.

SEC. 14. The auditor shall report to the legislative assembly, within ten days after the commencement of each regular session, a list of all collectors of the revenue, and other holders of public money, whose accounts remain unsettled for six months after they ought to have been settled, according to law, and the reasons thereof.

SEC. 15. The auditor shall receive an annual salary of $150, to be audited by the territorial treasurer, and paid by him out of any moneys in the treasury not otherwise appropriated.

SEC. 16. All the books, papers, letters, and transactions pertaining to the office of auditor, shall be open to the inspection of a committee of the legislative assembly, or either branch thereof, who shall examine and settle all the auditor's accounts.

SEC. 17. The auditor shall have power to administer all oaths required by law, in matters pertaining to the duties of his office.

SEC. 18. The auditor shall keep a seal of office, for the authentication of all papers, writings, and documents required by law, to be certified by him, and copies, so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the original.

AN ACT CREATING THE OFFICE AND DEFINING THE DUTIES OF TERRITORIAL TREASURER.

SEC. 1. Treasurer to be elected by the legislature.
His term of office.
2. Residence, bond, and oath of treasurer.
3. Treasurer's duties.
4. Books, &c., of treasurer subject to inspection.
When the auditor to examine and settle accounts of treasurer.
5. Treasurer to give duplicate receipts for money.
6. Treasurer authorized to administer oaths.
7. Treasurer to keep and use a seal of office.
8. Penalty of treasurer for refusing to pay warrants.
9. Treasurer's compensation.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be elected at this session of the legislative assembly, and annually thereafter, by joint ballot of the council and house of representatives, a territorial treasurer, who shall be commissioned by the governor, and hold his office for the term of one year, and until his successor is elected and qualified.

SEC. 2. The territorial treasurer shall reside and keep his office at the seat of government, and before entering upon his duties shall execute and deliver to the governor a bond, to the territory, in the sum of ten thousand dollars, to be approved by him, conditioned to pay over all moneys at such times as required by law, and for the faithful performance of all duties required of him by law, and take an oath of office, before some judge or justice of the peace within the territory, to be endorsed on his commission, and file a copy thereof, together with his bond, in the office of the secretary of the territory.

SEC. 3. It shall be the duty of the territorial treasurer—

1st. To receive and keep all moneys of the territory, not expressly required by law to be received and kept by some other person.

2d. To disburse the public moneys, upon warrants drawn upon the treasury according to law, and not otherwise.

3d. To keep a just, true, and comprehensive account of all moneys received and disbursed.

4th. To keep a just and true account of each head of appropriation made by law, and the disbursements under the same.

5th. To render his accounts to the auditor for settlement, quarterly, or oftener, if required.

6th. To report to each house of the legislative assembly, within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the preceding year.

7th. To give information, in writing, to either house of the legislative assembly, whenever required, upon any subject connected with the treasury, or touching any duty of his office.

8th. He shall account for and pay over all moneys received by him as such treasurer, to his successor in office, and deliver all books, vouchers, and effects of office to him, and such successor shall receipt therefor.

SEC. 4. All the books, papers, letters, and transactions pertaining to the office of treasurer, shall be open to the inspection of a committee of the legislative assembly, or either branch thereof, to examine and settle all accounts, and to count all moneys; and when the successor of any such treasurer shall be elected and qualified, the territorial auditor shall examine and settle all the accounts of such treasurer remaining unsettled, and give to him a certified statement, showing the balance of moneys, securities, and effects for which he is accountable, and which have been delivered to his successor, and report the same to the legislative assembly.

SEC. 5. The treasurer shall grant duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

SEC. 6. The treasurer shall have power to administer all oaths required by law, in matters pertaining to the duties of his office.

SEC. 7. The treasurer shall keep a seal of office, for the authentication of all papers, writings, and documents required by law to be certified by him, and copies, so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the originals.

SEC. 8. If the territorial treasurer shall wilfully refuse to pay any warrant, lawfully drawn upon the treasury, he shall forfeit and pay four-fold the amount, to be recovered by action against the treasurer and his securities, on his official bond, or otherwise shall also suffer such other punishment as the law may provide.

SEC. 9. The treasurer shall receive as a compensation for his services two per cent. on all moneys received, and two per cent. on all moneys disbursed by him, in his official capacity, to be audited by the auditor, and retained by said treasurer from any moneys in the treasury, not otherwise appropriated.

AN ACT TO PROVIDE FOR THE APPOINTMENT OF A LIBRARIAN, AND DEFINING HIS DUTIES.

SEC. 1. Librarian to be elected, give bond, and take oath.
2. Librarian to have charge of all things belonging to the library.
3. To provide a room at the seat of government.
4. All persons to have access to the library, but not to remove the books.
5. Assistant librarian may be appointed.
6. What hours the library to be kept open.
7. Librarian and secretary may make rules, &c., for the preservation of the library.
8. Librarian to report.
9. Compensation of librarian.
10. When this act to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a librarian shall be annually elected by the legislative assembly of the territory of Washington, that he shall give bonds to the secretary of the territory, in the sum of one thousand dollars, for the faithful performance of his duties, and he shall take an oath impartially and faithfully to perform the duties of librarian.

SEC. 2. He shall have the custody, charge, safe-keeping, management, and direction of all books, papers, maps, charts, engravings, paintings, and all other things, of whatsoever nature, properly belonging to the library, or directed to be deposited therein.

SEC. 3. He shall provide at the seat of government, and as convenient as possible to the house occupied by the legislative assembly, a proper room for the safe-keeping of the territorial library, and all things belonging or appertaining thereto, which shall be entrusted to his care.

SEC. 4. All persons shall have access to the library, but no persons shall be allowed to remove a book therefrom, except such persons as are provided for by the act of Congress organizing this territory, and they shall not be allowed to keep a book out of the library more than two weeks at a time.

SEC. 5. The librarian shall have authority to appoint an assistant librarian, who may perform the duties assigned the librarian, and for whose acts the librarian shall be responsible.

SEC. 6. The library shall be kept open during the session of the legislative assembly and supreme court, from the hours of nine to twelve o'clock in the forenoon, and from two to nine o'clock in the afternoon, and at other times during ordinary business hours.

SEC. 7. The secretary and librarian may adopt such further regulation, consistent with the provisions of this act, as they see fit, for the preservation and management of the library, and may prescribe fines and forfeitures for the breach of those herein provided, and the librarian is hereby authorized to sue, in the name of the territory, for the breach of any such regulations, and for any injuries done to the library, and for any fines and penalties under this act.

SEC. 8. The librarian shall, previous to the close of every session, report to the legislative assembly a true account of all expenses incurred during the session, and since the adjournment of the next preceding session; a list of all books and other property missing from the library, and an account of fines and forfeitures imposed, and those paid, and such other information in relation to the library as he deems expedient.

SEC. 9. The librarian shall receive annually for his services, the sum of three hundred dollars, payable quarterly, by the secretary of the territory, out of the fund appropriated by Congress for the expenses of the legislative assembly.

SEC. 10. This act shall be in force from and after its passage.

AN ACT RELATIVE TO PROSECUTING ATTORNEYS.

SEC. 1. Prosecuting attorney to be elected.
Term of office.
Proviso.
2. Abstract of votes to be forwarded to secretary of the territory, and certificate to be issued to prosecuting attorney.
3. Prosecuting attorney to take and file an oath.
4. Prosecuting attorney to reside in his district.
His duties.
5. Prosecuting attorney to make reports.
6. In absence of prosecuting attorney, court may appoint.
Governor to fill a vacancy.
7. When prosecuting attorney shall not receive a fee or be engaged as counsel or attorney.
8. Salary of prosecuting.
9. Prosecuting attorney's fees.
10. Prosecuting attorney's compensation in civil suits and per diem.
11. Fees of prosecuting attorney to be paid by the county; how.
12. Fees to be taxed by the district clerk in criminal cases, and paid into the county treasury.
13. Magistrate who commits a person to make out and transmit to the prosecuting attorney, a transcript of certain papers.

SEC. 1. *Be it enacted by the Legislative Asssembly of the Territory of Washington,* That at the first annual election, and every two years thereafter, there shall be elected by the qualified voters of each judicial district, a prosecuting attorney, who shall be an attorney at law, and have the qualifications of a voter, who shall continue in office for the term of two years, and until his successor is elected and qualified: *Provided*, That the legislative assembly, at its present session, shall elect, on joint ballot, prosecuting attorneys for the several districts, who shall hold their office until the next general election, or until their successors are duly elected and qualified.

SEC. 2. The clerks of the boards of county commissioners shall make out an abstract of the votes given in their respective counties for prosecuting attorney, and transmit the same to the secretary of the territory; and said votes shall be canvassed, and a certificate issued, in the same manner as in the election of delegate to congress.

SEC. 3. Every prosecuting attorney, before entering upon the duties of his office, shall take and subscribe an oath, faithfully to discharge the duties of his office as prosecuting attorney; such oath shall be endorsed on the back of the certificate, and a copy thereof, certified to by the officer before whom the oath shall have been taken, shall be filed in the office of the secretary of the territory.

SEC. 4. He shall reside in his district during his continuance in office, shall commence and prosecute all civil and criminal actions in which the territory or any county in his district may be a party, defend all suits brought against the territory or any county in his district, and prosecute all forfeited recognizances, and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the territory or any county in his district. He shall appear on behalf of the territory in the supreme court in all appeals or writs of error, taken from any county in his district.

SEC. 5. The several prosecuting attorneys shall annually, in the month of December, make to the secretary of the territory, a report of the amount and kind of official business by them done respectively, in the preceding year, the number of persons prosecuted, the offenses for which such prosecutions were had, the results thereof, and the punishment awarded in each case, with such particular statements and suggestions as he may deem interesting and useful.

SEC. 6. If the prosecuting attorney of any district shall not attend at any term of the district court, or shall, from any cause, be unable to attend to the discharge of his duties at such term, the court may appoint some qualified person to discharge the duties of prosecuting attorney, who shall receive the usual fees therefor; and in case of a vacancy in the office of prosecuting attorney, the governor may appoint some qualified person to discharge the duties of the office until the next annual election, who shall receive the salary and usual fees therefor.

SEC. 7. No prosecuting attorney shall receive any fee or reward from, or on behalf of, any prosecutor, for any of his official services, or, during the pendency of any such prosecution, be engaged as counsel or attorney, for either party, in any civil action depending essentially upon the same facts.

SEC. 8. Each prosecuting attorney shall be entitled to receive a salary, in semi-annual payments, on the first day of July and January in each year, at the annual rate of two hundred dollars, to be paid from the territorial treasury.

SEC. 9. Each prosecuting attorney shall receive the following fees: In all crimnal prosecutions, where the punishment is death, or imprisonment for life, where the prisoner is convicted, twenty-five dollars; where the prisoner is acquitted, twelve dollars. In all criminal prosecutions, where the punishment is imprisonment in the penitentiary for any less term than for life, where the prisoner is convicted, fifteen dollars; where the prisoner is acquitted, seven dollars. In all criminal prosecutions where the punishment is imprisonment in the county jail, or not particularly specified in this section, where the prisoner is convicted, ten dollars; where the prisoner is acquitted, five dollars.

SEC. 10. Each prosecuting attorney shall receive, for the prosecution of all forfeited recognizances, debts, fines, and forfeitures accruing to the territory or any county in his district, ten per cent. upon the amount recovered. For each civil suit that he may defend or prosecute on behalf of any county in his district, twenty-five dollars. For each day's attendance upon the district court, during the sitting of the grand jury, in any county in this district, five dollars.

SEC. 11. The fees of prosecuting attorneys, provided for in the ninth and tenth sections of this act, shall be paid by the county where or to which the service was rendered. It shall be the duty of the district clerk, at the close of each term of the district court in this county, to tax the fees of the prosecuting attorney for that term, which bill of fees shall be approved by the judge of the district court. Upon presentation of said bill of fees to the county auditor, it shall be his duty to draw a warrant upon the county treasury for the amount of said bill in favor of the prosecuting attorney.

SEC. 12. It shall be the duty of the district clerk, in all criminal prosecutions, where the prisoner is convicted, to tax and collect, as costs against such prisoner, for the use of the county, an amount in each case equal to the fees allowed the prosecuting attorney by the tenth section of this act. Said district clerk shall pay said fees, when collected, semi-annually into the county treasury, taking duplicate receipts from the county treasury therefor, one to be retained by himself, and the other to be filed in the office of the county auditor, which receipt, when so filed, shall be sufficient to charge the county treasurer with the receipt of said fees.

SEC. 13. Each magistrate who shall commit or hold to bail any person charged with crime against the laws of this territory, shall immediately make out and transmit, under seal, by mail or other safe conveyance, to the prosecuting attorney of the proper district, a copy of the original affidavit, the statements of the prisoner, and depositions of all the witnesses examined on the part of the territory.

AN ACT CREATING THE BOARD OF COUNTY COMMISSIONERS AND DEFINING THEIR DUTIES.

SEC. 1. Commissioners to be elected.
Two to constitute a quorum.
Their term of office.
2. The first commissioners to be elected for one, two and three years, and one annually thereafter.
Proviso.
3. Persons elected to vacancies to fill the unexpired term.
4. Each commissioner to take and file an oath.
5. Of the sessions of the commissioners.
6. County auditor to be clerk of the board of county commissioners.
7. Extra sessions may be held.
Notice thereof.
Proviso.
8. Compensation of county commissioners
9. When two commissioners disagree, the question to be postponed.
10. Commissioners to have a seal.
The seal to be evidence.
Private seal of chairman of the board to be considered a seal; when.
11. Duties of the county commissioners.
12. How real estate of a county may be sold.
13. Record of the proceedings of the commissioners to be kept.
14. Commissioners to elect a chairman.
His duties and powers.
Proviso.
15. Certain officers to be provided by the commissioners.
16. At the July session the commissioners to examine the accounts of the treasurer and auditor.
17. At the July term to examine and receive the assessment roll and cause it to be filed.
18. Commissioners to divide the county into precincts and create new precincts and appoint judges of the election.
19. Commissioners to have the superintendance of the poor.
20. When commissioners may compound a debt of their county.
21. No commissioner to be interested in a contract with the county under penalty.
22. Commissioners may administer oaths.
23. Commissioners to provide a place for holding courts.
24. Appeals from the decisions of the board of commissioners; how taken.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be established in each organized county in this territory, a board of commissioners to consist of three qualified electors, two of whom shall constitute a quorum to do business, to be elected by the qualified electors at the annual election, who shall hold their office for three years: *Provided,* That the commissioners now in office, or hereafter appointed to office, shall continue in office until a new board of commissioners shall be elected at the first annual election.

SEC. 2. The commissioners first elected in any county in this territory, shall serve for the term of one, two and three years, to be by them determined by lot at their first session, and annually thereafter, one commissioner shall be elected, and shall continue in office three years: *Provided,* That where there are three or more election districts in one county, there shall not be two commissioners serving on the board from one precinct at the same time.

SEC. 3. Whenever it shall become necessary to elect a commissioner to fill any vacancy occasioned by death, resignation, or removal, the person elected, shall hold his office for the unexpired term for which his predecessor was elected, and until his successor is elected and qualified.

SEC. 4. Before any commissioner shall enter upon the duties of his office, he shall take and subscribe an oath or affirmation before some person authorized to administer the same, faithfully to discharge the duties of a commissioner of the county in which he resides, and deposit a certificate thereof with the clerk of the board of commissioners of his county, to be by him filed in his office.

SEC. 5. The board of commissioners shall hold four sessions annually, at the seat of justice of their respective counties, commencing on the first Mondays of April, July, September and December; at all of which they shall transact any business which may be required by law: *Provided,* That if the district court be in session on any of the above mentioned days the commissioners shall meet on the Monday preceding, but no session shall be continued for a longer period than six days.

SEC. 6. The auditor of the county shall be the clerk of the board of county commissioners, and attend their meetings and keep a record of their proceedings, and the sheriff of the county shall also by himself or deputy, attend and execute their orders.

SEC. 7. The said board of county commissioners are hereby authorized to hold extra sessions, in case they may think the business of their county requires the same; and ten days notice from any two of the commissions to the third, shall be considered a sufficient call for said extra session: *Provided,* That no such extra session shall exceed three days.

SEC. 8. The commissioners shall each receive three dollars per day for each and every day they may be necessarily employed in transacting the county's business, and ten cents a mile for every mile traveled in going to, and returning from the meeting of said board, or in the discharge of any official duty, to be computed by the most usually traveled route.

SEC. 9. When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, it shall be postponed to a subsequent meeting.

SEC. 10. The commissioners of each county shall have and use a seal for the purpose of sealing their proceedings; and copies of the same when signed and sealed by said commissioners, and attested by their clerk, shall be good evidence of such proceedings in the trial of any cause in any court of this territory, and until such seal shall be provided, the private seal of the chairman of such board of county commissioners shall be considered a seal.

SEC. 11. The several boards of county commissioners are authorized and required:

1st. To provide for the erection and repairing of court houses, jails, and other necessary public buildings for the use of the county;

2d. To lay out, discontinue, or alter county roads and highways, within their respective counties, and to do all other necessary acts relating thereto;

3d. To license and fix the rates of ferriage, to grant grocery and other license, authorized by law to be by them granted;

4th. To fix the amount of taxes to be assessed according to the provisions of law, and cause the same to be collected;

5th. To allow all accounts chargeable against such county not otherwise provided for, and to audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated to its benefit;

6th. To have the care of the county property and the management of the county funds and business; except in cases otherwise provided for, and shall have no other powers, except such as are, or may be given by law.

SEC. 12. Real estate belonging to any county, may be sold by an agent duly appointed by the order directing such sale, who shall have the same powers as a commissioner appointed to sell real estate by the district or probate court.

SEC. 13. The board of county commissioners shall cause to be recorded in a book to be kept for that purpose, all their proceedings and their determinations touching all matters properly cognizable before them, and all books, accounts, vouchers, papers and accounts touching the business or property of the county shall be carefully kept by the clerk, and open to the inspection of every person.

SEC. 14. The commissioners aforesaid, at their first session after the annual election in each and every year, shall elect one of their number to preside at the meetings of the board, and he shall sign all documents requiring the signature of the board, and the signature of such person as chairman of the board of commissioners shall be as legal and binding as if the whole board had affixed their names: *Provided,* That in case such chairman shall be absent at any meeting of the board, all documents requiring the signature of the board, shall be signed by both members present.

SEC. 15. It shall be the duty of the board of county commissioners to provide offices for the sheriff, the county auditor, and clerk of the district court, and also to provide all books and stationery necessary for the use of the board of county commissioners, the office of the county auditor, the clerk of the district court, the probate court, and county treasurer, and also, to provide convenient desks for the preservation and security of the books and other documents in the several offices.

SEC. 16. At the July session, the board of county commissioners shall examine and compare the accounts and vouchers of the county auditor and county treasurer, count the funds in the county treasury, and shall make a full and accurate statement of the receipts and expenditures of the preceding year, and shall cause the same to be posted up at the court house door, and at two other public places in their county, and if there shall be no court house, then at three public places in such county, and shall publish the same in some newspaper of such county if there be any.

SEC. 17. The board of commissioners at their session in July in each year, shall receive and inspect the assessment roll returned by the assessors, and if it be found correct, it shall be accepted by the board in writing, signed by the chairman and attested by the clerk, and cause the same to be filed in the office of the county auditor, where it shall remain as a matter of record, and shall be a guide for future assessors so far as the same shall remain correct.

SEC. 18. It shall be the duty of the board of county commissioners at their first session, to divide their respective counties into election precincts, in such manner as shall be most convenient for the population, and appoint a place for holding the elections therein; and they shall create new precincts from time to time as the population may require, and on the petition of ten voters resident more than ten miles from any place of election, it shall be the duty of the board of county commissioners to establish a precinct and appoint judges of elections therefor.

SEC. 19. The boards of commissioners of the several counties of this territory, are vested with the entire surperintendence of the poor in their respective counties.

SEC. 20. The county commissioners of their respective counties, shall have power to compound for a release in whole, or in part, of any debt due to their county, and for the use thereof, when in their opinion the interests of the county will not be prejudiced thereby ; except in cases when they or either of them are personally interested.

SEC. 21. No county commissioner shall, directly or indirectly, as contractor, be concerned in any contract for work to be done, or materials to be furnished for the county, under the penalty of two hundred dollars, to be recovered by an action at law, for the use of the county ; and such commissioner shall moreover forfeit any compensation he was to receive on such contract.

SEC. 22. The commissioners are authorized and empowered to administer all oaths or affirmations, necessary in discharging the duties of their office.

SEC. 23. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

SEC. 24. Any person may appeal from the decision of the board of commissioners, to the next term of the district court of the same county ; such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to ; which notice shall be in writing, and shall be delivered personally to the commissioners, or left with the clerk of the board ; and the party appealing shall give bond to the county with one or more sureties, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court.

AN ACT SUPPLEMENTARY TO AN ACT CREATING THE BOARD OF COUNTY COMMISSIONERS AND DEFINING THEIR DUTIES.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the regular session of the board of county commissioners shall commence on the first Mondays of March, June, September and December, and that the provisions of an act to which this is a supplement, so far as they are inconsistent with this act, be and they are hereby repealed.

AN ACT AUTHORIZING COUNTY COMMISSIONERS TO LOCATE LAND FOR THE BENEFIT OF COUNTY SEATS.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county commissioners in each county of this territory be, and are hereby authorized to locate one quarter section of land in their respective counties for the benefit of county seats, in accordance with an act of congress passed May 26, 1824, and report the same to the office of surveyor general.

AN ACT IN RELATION TO COUNTY AUDITOR.

SEC. 1. Election of county auditor, his qualifications, and term of office.
2. To perform the duties of clerk and recorder.
3. Form and manner of conducting the election.
Proviso.
4. Oath and bond of county auditor.
5. Duty of county auditor.
6. To keep an account current with the treasurer.
7. May appoint deputies.
Duties of deputies.
Auditor to be responsible for the acts of deputies.
8. Auditors authorized to administer oaths.
9. Auditor prohibited from practicing as an attorney.
10. Two or more orders may be issued instead of one.
11. When commissioners may deputize an auditor.
12. Further duties of auditor.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That at the first annual election, in each county, and every two years thereafter, there shall be elected a county auditor, who shall have the qualifications of a voter, and shall continue in office for the term of two years, and until his successor is elected and qualified.

SEC. 2. The auditor shall also be clerk of the board of county commissioners, and recorder of deeds in the county for which he is elected.

SEC. 3. The election, provided for by this act, shall be conducted, and the returns made, in the manner and form prescribed by the law regulating general elections: *Provided,* That the person or persons associated with the auditor in opening and examining the poll books, shall issue to the person duly elected under this act, his certificate of election.

SEC. 4. Every auditor, within fifteen days after receiving his certificate of election, and before he shall enter upon the discharge of the duties of his office, shall take and subscribe an oath, before the clerk of the district court, or judge of probate, of his proper county, faithfully and impartially to perform the duties of his office, as prescribed by law, to the best of his abilities; which oath shall be endorsed on the back of his certificate of election, recorded in a book kept for the purpose in his office, and filed in the office of the clerk of the district court of the county, or if there be no such office, with the clerk of the district court of the county to which his county may be attached for judicial purposes. He shall also give a bond to his county, with good and sufficient sureties, in the penal sum of one thousand dollars, to be approved by the county commissioners of his county, conditioned that he will faithfully and impartially fulfil the duties of his office; which bond shall be filed in the office of the clerk of the district court of the proper county.

SEC. 5. He shall audit all accounts and demands chargeable against his county, which are not directed to be settled and allowed by some other tribunal or person, and present the same to the county commissioners for their inspection and allowance, and for all such sums of money allowed by the county commissioners, or such other tribunal or person, or where the same is fixed by law, he shall issue his order on the treasurer of the county, payable to the person entitled thereto, which order shall be numbered according to the rate of issue, and the number, date, and amount of each, and to whom payable, and for what purpose drawn, shall, at the time of issuing the same, be entered in a book kept for that purpose.

SEC. 6. He shall keep an accurate account current with the treasurer of the county, and when any person shall deposit with him any receipt, given by the treasurer for money paid into the treasury, he shall file such receipt, and charge the treasurer with the amount thereof.

SEC. 7. The county auditors of the several counties may appoint deputy auditors, who shall be appointed in writing, and shall, before entering upon the discharge of the duties of their office, take and subscribe an oath, faithfully to perform the duties of their office, which oath shall be endorsed on the appointment, and recorded in the office of the county auditor.— The county auditors shall be responsible for the acts of their deputies, and revoke their appointment at pleasure.

SEC. 8. Auditors and their deputies are authorized to administer oaths, necessary in the performance of their duties, and in all other cases where oaths are required by law to be administered.

SEC. 9. No person doing the duties of auditor shall practice as an attorney before the board of county commissioners.

SEC. 10. Any person may have a county order cancelled by the auditor, and two or more new orders issued in lieu thereof, by paying to such auditor the fees allowed for such services.

SEC. 11. In case the auditor is unable to attend to the duties of his office, during the session of the board of county commissioners, and having no deputy able to attend, some person may be deputized by such board to perform the duties of auditor and clerk thereof, for the time being.

SEC. 12. The county auditor shall attend the meeting of the board of county commissioners of their respective counties, and do and perform all the duties imposed by law, and shall copy into books the reports of the treasurer, of the receipts and disbursements of the county; and whenever the duplicate shall be put into the hands of the collector, it shall be the duty of the county auditor to send a statement of the same, wherewith such collector stands charged, to the county treasurer.

AN ACT IN RELATION TO COUNTY TREASURER.

SEC. 1. Election of treasurer.
Term of office.
2. Treasurer to take oath and give bond.
3. Treasurer to receive all moneys due.
4. County treasurer may appoint deputies.
5. County treasurer's office to be kept at the county seat.
6. How his books are to be kept.
7. His office to be subject to inspection and examination, and the money to be exhibited once a year.
8. When to pay auditor's warrants.
Duty when not paid.
Proviso.
9. Interest on auditor's order.
10. County orders to be paid by priority.
Proviso.
11. All orders redeemed to be deposited with the auditor.
12. When sued county treasurer may be removed.
13. Settlement of county treasurer annually.
14. Compensation of county treasurer.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That at the first annual election, in each county, and every two years thereafter, there shall be elected a county treasurer, who shall have the qualifications of a voter, and shall continue in office for the term of two years, and until his successor is elected and qualified.

SEC. 2. The county treasurer, before he enters on the duties of his office, shall take an oath faithfully to discharge the duties of his office, as prescribed by law; he shall, also, before he shall enter upon the duties of his office, give a bond to the county, with at least two sureties, residing in the county, in a penal sum of not less than double the amount of funds liable to come into the hands of the said treasurer during his term of office, the amount to be fixed, and the bond to be approved by the county commissioners of the proper county, conditioned that all moneys received by him for the use of the county, shall be paid, as the commissioners shall from time to time direct, except where special provision is made by law for the payment of such moneys, by order of any court, or otherwise, and for the faithful discharge of his duties.

SEC. 3. He shall receive all moneys due and accruing to his county, and disburse the same on the proper orders, issued and attested by the county auditor.

SEC. 4. County treasurers may appoint one or more deputies, and may take from them bond, with sureties; they shall have power to remove their deputies at pleasure, and every county treasurer, and his sureties, shall be liable for all official acts of his deputies.

SEC. 5. The county treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for transaction of business during business hours; and he, and his deputy, are authorized to administer all oaths necessary in the discharge of the duties of his office.

SEC. 6. He shall so arrange and keep his books, that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account.

SEC. 7. He shall, at all times, keep his books and office subject to the inspection and examination of the board of county commissioners, and shall exhibit the money in his office to such board at least once a year, and as often as such board may require.

SEC. 8. He shall pay all orders of the county auditor when presented, if there be money in the treasury for that purpose, and write on the face of such order the date of redemption, and his signature. If there be no funds to pay such order when presented, he shall endorse thereon: "not paid for want of funds," and the date of such endorsement, over his signature, which shall entitle such order thenceforth to draw legal interest:—*Provided*, That such interest shall cease from the date of notice by publication in some newspaper, printed or circulated in his county, to be given by the county treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case; and if there be no such newspaper, then by posting such notice at three public places in such county.

SEC. 9. When the county treasurer shall redeem any order on which interest is due, he shall note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

SEC. 10. County orders shall be redeemed by the treasurer according to the priority of the time of presentment: *Provided,* Such orders, payable out of the county revenue, shall be received in payment of county taxes, without any regard to priority of presentment, or number, but such treasurer shall not pay any balance thereon, over and above such tax, when there are outstanding orders unpaid, for want of funds.

SEC. 11. The treasurer shall, on the first Monday in September, in each year, deposit with the county auditor all county orders redeemed, who shall receipt therefor.

SEC. 12. Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he may be removed by the board of county commissioners of his county.

SEC. 13. The county treasurer shall annually make complete settlement with the board of county commissioners, at the regular September term thereof, and shall, at the expiration of his term of office, deliver to his successor all public money, books, and papers in his possession.

SEC. 14. The county treasurer shall receive as a compensation for his services, two per cent. on all moneys received, and two per cent. on all moneys paid out by him, for the county.

AN ACT RELATING TO COUNTY ASSESSORS.

SEC. 1. Assessor to be elected in each county.
   His term of office.
2. To give bond and take an oath.
3. Duties of the assessor.
   Proviso.
4. Punishment for neglect of duty.
   Proviso.
5. Duplicate assessment roll to be kept, and delivered over to the successor.
6. Compensation of assessor.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That at the first annual election, in each county, and annually thereafter, there shall be elected a county assessor, who shall have the qualifications of a voter, and shall continue in office for the term of one year, and until his successor is elected and qualified.

SEC. 2. The said assessors shall, each, before entering on the discharge of the duties of his office, give a bond to the county for which he was elected, with two or more sureties, to be approved by the board of county commissioners, in such penal sum as such board shall direct, conditioned for the faithful performance of his duties, according to law, and shall take and subscribe an oath, faithfully and impartially to discharge the duties of his office, according to law, and to the best of his abilities.

Sec. 3. Each assessor shall receive from the county auditor, before the first Monday of March, a blank assessment roll, and shall prepare a full and complete assessment roll, according to law; and three weeks before the last Monday in May, shall give public notice in some newspaper printed in his county, and if there be no such newspaper, then in some newspaper in general circulation in the territory, or by posting up notices in six conspicuous places in his county, setting forth that on the last Monday in May the assessor will attend at the office of the county auditor of his county, and, with the assistance of said auditor, will publicly examine the assessment rolls, and correct all errors in valuations, descriptions, or qualities of lands, lots, or other property; and it shall be the duty of persons interested, to appear at the time and place appointed; and if it shall appear, during such examination, that there is any lands, lots, or other property, assessed twice, or assessed beyond its actual value, or assessed in the name of a person not the owner thereof, or any lands, lots, or other property, not assessed, the auditor and assessor shall make the proper corrections:—*Provided*, That for the year 1854, the acting assessor shall not be required to prepare his assessment roll before the first Monday in July, or to give notice of his attendance, or attend at the county seat, to correct errors in such roll.

Sec. 4. If any assessor shall wilfully neglect to attend at the time and place required, he shall be liable for a violation of his duty, and shall suffer such fine and imprisonment, or both, as the district court shall impose: *Provided*, That it may be competent for any assessor, in case of his being prevented by sickness, or any other unavoidable cause, as above described, to appoint some suitable person, having the qualifications of a voter, his deputy, who shall perform all the duties of the assessor he represents, and for whose acts the said assessor shall be responsible; and said deputy shall, before he enters on the discharge of the duties of his office, take and subscribe, before the county auditor, an oath, faithfully and impartially to perform the duties devolving upon him, which oath shall be filed in the office of the county auditor.

Sec. 5. It shall be the duty of the assessor, in each county, to make out and retain in his possession, a duplicate of his assessment roll, and shall make the necessary corrections therein, so that such duplicate will correspond with the assessment roll on file in the office of the county auditor, and also make a plot of town plots within his county, and note thereon the owner of each tract of land, and of each town lot, and deliver such duplicate assessment roll and plot, and other documents relating thereto, to his successor in office.

Sec. 6. Each assessor shall receive a compensation of five dollars per day, for each day actually and necessarily employed in the discharge of the duties of his office, and such reasonable compensation for the copy of the assessment roll and plots of towns, as the board of county commissioners may allow, which compensation shall be paid out of any moneys in the county treasury not otherwise appropriated.

AN ACT TO AUTHORIZE THE ASSESSORS OF EACH COUNTY TO TAKE THE CENSUS.

Sec. 1. To take the census and report to the secretary.
2. What the census shall be.
3. The county commissioners may make allowances to the assessors.

Sec. 1. *Be it enacted by the Legislature of Washington Territory,* That it shall be the duty of the assessors of each county in this territory, to take the census of all the inhabitants of their respective counties, who shall report a copy of said census to the secretary of the territory, on or before the first Monday of December, in each year.

Sec. 2. Said assessor shall make a complete list of all the white male inhabitants, with their ages, occupations, the state or county they are from, whether married or single, and also, whether citizens or aliens. Also, all white female inhabitants, their ages, whether married or single, and the county or state they are from. He shall make separate lists of all taxable half breed indians, negroes, kanakas, and mulatoes, and chinamen.

Sec. 3. The county commissioners shall make to the assessors of their counties, such allowance for taking the census, as they may deem just and proper, to be paid out of the county treasury; but no allowance for mileage shall be made to such assessors.

AN ACT RELATIVE TO GRAND AND PETIT JURORS.

SEC. 1. Who shall serve as jurors, and who shall be exempt.
2. County commissioners to cause jury list to be prepared.
3. Clerk of district court to place names on jury list in jury boxes.
4. Jury boxes to be locked, and key deposited with the county auditor.
5. When and how the grand jury shall be drawn.
6. Clerk to make a list of jurors.
Disposition of the names drawn.
7. Number of grand jury.
Deficiency, how filled.
8. Clerk to issue and deliver venire to sheriff.
9. Sheriff, when to summon jury.
10. Jurors, when and how punished for failing to appear.
11. District judge may order clerk not to draw jury.
12. When court may order the sheriff to summon jurors from the body of the county.
13. Clerk's certificate of juror's fees.
Fees, how paid.

SEC. 1. All qualified electors and house-holders shall be competent to serve as grand jurors, and all qualified electors shall be competent to serve as petit jurors, within the county where they reside, or within any county to which such county may be attached for judicial purposes: *Provided*, That civil officers of the United States, probate judges, and judges of the supreme court, attorneys at law, ministers of the gospel, or priests, school teachers, practicing physicians, sheriffs, and their deputies, constables, clerks of court, county and territorial officers, millers, ferrymen, and all persons more than sixty years of age, shall not be compelled to serve as jurors, and in preparing jury lists, the county commissioners shall omit the names of such persons, but no finding or verdict of a jury shall be invalid on the ground that any person serving thereon was not compelled by law so to serve.

SEC. 2. The county commissioners of the several counties, at their annual session in December, or, if necessary, at any regular session, shall cause to be prepared a full and correct list of all persons qualified to serve as grand jurors, and also a full and correct list of all persons qualified to serve as petit jurors within their respective counties, which lists the county auditor shall forthwith furnish to the clerk of the district court of the county, or of the county to which such county is attached for judicial purposes.

SEC. 3. The clerk of the district court, upon the receipt of such lists, shall, in the presence of the auditor and sheriff, or his deputy, of the county, place in separate boxes, to be prepared for that purpose, the names of all such grand and petit jurors, each upon a separate piece of paper, folded with the name inside.

SEC. 4. The boxes shall be provided with a lock and key, and when the names are placed therein, they shall be locked up, the boxes left with the clerk, and the key delivered to the county auditor, and the boxes shall only be opened as is hereinafter provided.

SEC. 5. At least twenty days before the day when any term of the district court is to commence, the county auditor, sheriff, or his deputy, and the clerk shall meet at the clerk's office, and after shaking the boxes in the presence of the said auditor, sheriff, or his deputy, and clerk, they shall be opened, and the clerk shall separately draw from the box containing the names of the grand jurors, the names of twenty persons, who shall serve as grand jurors for that term. And he shall, in like manner, draw from the box containing the names of petit jurors, the names of eighteen persons, who shall serve as petit jurors for said term. When any name is drawn from the petit jury box, which shall have been previously drawn upon the grand jury, for that term, the name shall be returned to the box, and another drawn.

SEC. 6. The clerk shall forthwith make a list of the names of the persons drawn as jurors, and shall then place the tickets, on which the names drawn are written, in two other separate boxes, one for grand and the other for petit jurors, and no name shall be drawn from these last mentioned boxes, until all the names in the two first mentioned boxes are exhausted. When the jury lists for the term are complete, the boxes shall be locked up and remain with the clerk, but the auditor shall keep the keys.

SEC. 7. The grand jury shall consist of not more than twenty, nor less than sixteen persons, and when from any cause there shall not be a full panel of grand or petit jurors in attendance, the court may order the sheriff to summon from the by-standers or body of the county, a sufficient number of persons to fill up the panel, and when from any cause, excuse, or otherwise, the grand jury is diminished before its discharge, the panel may be filled in like manner.

SEC. 8. The clerk of the district court shall, without delay, issue and deliver to the sheriff, or his deputy, two venires, one for the grand jury and one for the petit jury, under the seal of the court, commanding him to summon the persons so drawn as grand jurors, to appear before the said court, at or before the hour of eleven o'clock, A. M., on the first day of the next term thereof, to serve as grand jurors; and the persons so drawn as petit jurors, to appear before the said court, at or before the hour of ten o'clock, A. M., on the second day of the term thereof, to serve as petit jurors.

SEC. 9. The sheriff shall summon the persons named in such venires to attend such court as grand or petit jurors, as the case may be, at least five days previous to the sitting of such court, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age. He shall return such venires to the court, at the opening thereof, specifying those who were summoned, the time and manner in which each person was notified.

SEC. 10. Every person who shall fail to appear when lawfully summoned as a grand or petit juror, without having a reasonable excuse therefor, shall be considered guilty of a contempt, and shall be fined by the court in any sum not exceeding twenty dollars, for the use of the county, unless good cause be shown for such default; and it shall be the duty of the clerk of the district court to issue a summons against such delinquent, where such person shall not come in without process, to show cause, at the next term of court, why he should not be fined for such contempt.

SEC. 11. The district court may, at any term thereof, or the judge, in vacation, direct the clerk not to draw the names of any grand and petit jurors, to serve as such at the next term of such court, nor at any term, until further order shall be made, and the clerk shall not proceed as required by the provisions of this act, until ordered so to do by the court.

SEC. 12. When from the order of the court, or from any other cause, there shall be no panel of grand or petit jurors in attendance at any term of a district court, the court may order the sheriff to summon the requisite number of grand and petit jurors from the body of the county, or bystanders, to serve as such during the term, or until discharged.

SEC. 13. It shall be the duty of the clerk of the district court, at the end of each term of such court, to make out and deliver a certificate to each grand and petit juror, stating the number of days of attendance, the number of miles traveled, and the amount of compensation due him, which certificate shall be allowed by the county auditor, and he shall draw a warrant therefor.

AN ACT TO CREATE AND REGULATE THE OFFICE OF SHERIFF.

SEC. 1. Election of sheriff.
His term of office and bond.
2. Of the appointment of deputies.
3. Powers of deputy sheriff the same as sheriff.
4. Duties of sheriff.
5. No sheriff to practice law.
Fine for violation.
6. Sheriff may be fined for neglect of duty.
7. No sheriff liable for damages unless his fees are tendered.

SEC. 8. How a vacancy in the office of sheriff to be filled.
9. Sheriffs to have their certificates of election and bond filed in the office of the auditor.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington*, That there shall be elected, in each county in this territory, a sheriff, who shall possess the qualifications of a voter, and hold his office for the term of two years, and shall, before he enters upon the duties of his office, execute a bond, with at least three sureties, in such penal sum, not less than two thousand dollars, nor more than five thousand dollars, to be approved by the board of county commissioners, in open court, or by the county auditor during vacation, subject to the approval of said board at their next meeting, and filed in the office of said county auditor.

SEC. 2. Each sheriff may appoint as many deputies as he may think proper, for whose official acts he shall be responsible, to the amount of their bond, and may revoke such appointments at his pleasure; and persons may also be deputed by any sheriff, in writing, to do particular acts; and the sheriff shall be responsible, on his official bond, for the default or misconduct in office of his deputies.

SEC. 3. Every deputy sheriff shall possess all the power, and may perform any of the duties prescribed by law to be performed by the sheriff, or by his deputies; shall serve or execute, according to law, all process, writs, precepts, and orders, issued or made by lawful authority, and to him directed, and he shall attend upon all courts of record, at every term.

SEC. 4. It shall be the duty of sheriffs, and of their deputies, to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county, as they may deem necessary.

SEC. 5. No sheriff, deputy sheriff, or coroner, shall appear or practice as attorney in any court, except in defence of themselves or their deputies; and either of said officers, for a violation of this section, shall forfeit a sum not exceeding fifty dollars.

SEC. 6. Whenever any sheriff shall neglect to make due return of any writ, or other process, delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal; such fine, however, not to exceed two hundred dollars, and also to an action for damages to the party aggrieved.

SEC. 7. No sheriff, deputy sheriff, or coroner, shall be liable for any damages for neglecting or refusing to serve any civil process, unless his legal fees (and an indemnifying bond, if he requires one,) are first tendered him.

Sec. 8. When a vacancy happens in the office of sheriff, the county auditor shall cause three advertisements to be put up, in a conspicuous place, in each election precinct in his county, stating the office to be filled, the time and place of holding the election, which time shall be at least ten days from the putting up of such advertisement, unless such vacancy shall occur within six months of the general election, then it shall be the duty of the board of county commissioners to fill such vacancy, by appointing some person, who shall possess the same qualifications as prescribed in the first section of this act, be subject to the same liabilities, and shall continue to perform the duties of said office, until a sheriff is elected and qualified.

Sec. 9. Every sheriff shall, before he enters on the duties of his office, cause his certificate of election or appointment, with the oath of office endorsed thereon, and his bond, with the approval thereon, to be recorded in the office of the auditor of the county.

AN ACT RELATIVE TO CORONERS.

Sec. 1. Election of coroner.
His term of office, oath, and bond.
2. Coroner to act as sheriff.
When, and with what restrictions.
3. Coroner's inquest, when and where held.
4. Juror failing to attend a coroner's inquest, to be fined.
5. Four persons may constitute a jury of inquest.
6. Coroner may subpœna and examine witnesses, summon a surgeon, &c.
7. Witnesses may be compelled to attend as before a justice of the peace.
8. Of the verdict of the jury.
9. When testimony to be reduced to writing.
Witnesses to be bound over or committed.
Papers to be filed with district clerk.
10. Proceedings when the person charged is arrested.
11. When a coroner to issue a warrant of arrest.
12. Form of coroner's warrant.
13. Coroner's warrant to be served in any county.
14. When the coroner to provide for the burial of the deceased.
15. When the money of deceased to be delivered to the treasurer.
16. Disposition of the money or property of deceased, by treasurer.
17. When the money may be paid on demand of the legal representatives.
18. Auditing the account of the coroner.
19. When justice of the peace may act as coroner.
20. Fees of coroner.
21. Justice acting as coroner, entitled to the same fees.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be elected at the first annual election, in every county in this territory, and every two years thereafter, a coroner, who shall hold his office for two years, and until his successor shall be elected and qualified, and shall take an oath of office, and file a copy thereof, together with a bond, in the sum of one thousand dollars, conditioned for the faithful performance of the duties of his office, to be approved by, and filed with the county auditor.

SEC. 2. The coroner shall perform the duties of sheriff, in all cases where the sheriff is interested, or otherwise incapacitated from serving; and whenever the coroner acts as sheriff, he shall possess the powers, and perform all the duties of sheriff, and shall be liable on his official bond, in like manner as a sheriff would be, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services; but before serving any process, as required by this section, the coroner shall give an additional bond, in double the amount of the sum sued for, on damages claimed.

SEC. 3. When a coroner has been informed that a person has been killed, or has committed suicide, or has suddenly died, under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another, by criminal means, he shall go to the place where the body is, and forthwith summon six good and lawful persons, qualified by law to serve as jurors, to appear before him forthwith; at the place where the body of the deceased is, to inquire into the cause of the death.

SEC. 4. Every person summoned as a juror, who shall fail to appear, without having a reasonable excuse, shall forfeit any sum not exceeding twenty dollars, to be recovered by the coroner in the name of the territory, before any justice of the peace, in the proper county, and when collected, to be paid over to the county treasurer, for the use of the county.

SEC. 5. When four or more of the jurors attend, they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict therein, according to the evidence afforded them, or arising from the inspection of the body.

SEC. 6. The coroner may issue subpœnas for witnesses, to the sheriff or any constable of the county, returnable forthwith, or at such time and place as he may appoint, which may be served by any competent person.—He must summon, and examine as witnesses, on oath, by him administered, every person who, in his opinion, or that of any of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body, and give, under oath, a professional opinion as to the cause of the death.

Sec. 7. A witness served with a subpœna may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpœna issued by a justice of the peace.

Sec. 8. After inspecting the body, and hearing the testimony, the jury shall render their verdict, and certify the same, by an inquisition, in writing, signed by them, and setting forth who the person killed is, if known, and when, where, and by what means he came to his death; and if he was killed, or his death occasioned by the act of another, by criminal means, who is guilty thereof, if known.

Sec. 9. In all cases where murder or manslaughter is supposed to have been committed, the testimony of witnesses taken before the coroner's jury, shall be reduced to writing by the coroner, or under his direction, and he shall also bind over such witnesses as he may deem proper, to appear and testify at the next term of the district court of the county, and in default of a recognizance, may commit such witnesses to the county jail, and shall forthwith file the written testimony, inquisition, and recognizance with the clerk of such court.

Sec. 10. If, however, the person charged with the commission of the offence be arrested before the inquisition can be filed, the coroner shall deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statement taken before him, and the recognizance, to the office of the clerk of the district court of the county.

Sec. 11. If the jury find that the person was killed by another, by criminal means, and the party committing the act be ascertained by the inquisition, and be not in custody, the coroner shall issue a warrant, signed by him, with his name of office, for the arrest of the person charged, into one or more counties, as may be necessary, and returnable forthwith to the nearest justice of the peace, judge, or committing magistrate.

Sec. 12. The coroner's warrant shall be in substantially the following form:

United States of America, }
The territory of Washington, } ss.

To any sheriff or constable of the territory:

An inquisition having been this day found by a coroners jury, before me, stating that A. B. has come to his death by the act of C. D., by criminal means, (or as the case may be, as found by the inquisition,) you are therefore commanded, in the name of the United States of America, forthwith to arrest the above named C. D., and take him before the nearest or most accessible magistrate in this county,

Given under my hand this — day of ———, A. D. 18—.

E. F., coroner of the county of ———,

SEC. 13. The coroner's warrant may be served in any county, and the officers serving it shall proceed thereon, in all respects, as upon a warrant of arrrest.

SEC. 14. In all cases where no demand shall be made by the friends of the deceased for the body for burial, the coroner shall provide for the burial, in a suitable manner, at the expense of the estate of the deceased, if there be sufficient to pay the same, if not, at the expense of the county.

SEC. 15. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money, or other property, which may be found upon the body, unless claimed in the mean time by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against the coroner to recover the same, by a civil action, in the name of the county.

SEC. 16. Upon the delivery of money to the treasurer, he shall place it to the credit of the county. If it be other property, he shall, within thirty days, sell it at public auction, upon reasonable public notice, and shall, in like manner, place the proceeds to the credit of the county.

SEC. 17. If the money in the treasury be demanded within six years, by the legal representatives of the deceased, the treasurer shall pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter, or the same may be so paid at any time thereafter, upon the order of the board of county commissioners of the county.

Sec. 18. Before auditing and allowing the account of the coroner, the board of county commissioners shall require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

Sec. 19. If the office of coroner be vacant, or he be absent, or unable to attend, the duties of his office may be performed by any justice of the peace in the county, with the like authority, and subject to the same obligations and penalties as the coroner.

Sec. 20. A coroner shall receive ten dollars for each inquest that he may hold, and necessary burial expenses; and also twenty cents per mile for each mile necessarily traveled to hold any inquest; to be paid by the county, and to be audited and allowed as other county charges.

Sec. 21. A justice of the peace, acting as coroner, shall be entitled to the same fees, payable in the same manner.

AN ACT TO CREATE THE OFFICE OF WRECK MASTER AND DEFINE HIS DUTIES.

Sec. 1. When and in what counties wreck master to be elected.
2. Certain person appointed wreck master until next general election.
3. Wreck master to qualify and give bond.
4. Certain wrecked property not deemed to belong to the territory.
5. Duty of wreck master in reference to wrecked property.
6. Proceedings in case such property be in a perishable state.
7. How same shall be sold.
8. Proceedings when such property is claimed within one year.
9. Bond to be given by claimant.
10. Disposition of such bond.
11. Plaintiff prevailing in suit, costs of defendant to be deducted from damages recovered.
12. Duty of officer upon order to deliver wrecked property.
13. Wreck master to render aid and assistance ; when.
14. Magistrates, constables &c., to assist wreck master.
15. Compensation of all persons rendering assistance.
16. Salvage shall not exceed a certain amount.
17. Proceedings in case salvage is not settled by agreement of parties.
18. Justice of peace may appoint three persons to settle salvage and expenses.
19. Powers and duties of such appraisers.
20. Compensation of appraisers.
By whom paid.
21. Wreck master to give notice of wrecked property.
22. What such notice shall contain.
23. Liability of wreck master.
24. Penalty for taking any goods from any stranded vessel, &c.
25. Penalty for defacing or obliterating marks on wrecked property, &c.
26. Duty of wreck master if property not claimed within a year.
27. Duty of certain persons to prosecute for violations of this act.
28. This act not to conflict with "act relative to scows, boats," &c.
29. Wreck masters to hold their office for three years.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That on the next annual or general election, the qualified voters of Pacific, Chehalis, Thurston, King, Jefferson, Island and Whatcom counties shall elect a wreck master, whose duties shall be as hereinafter provided.

Sec. 2. That until said general election, J. D. Holman be and he is hereby appointed wreck master within and for the county of Pacific, D. K. Welden in and for the county of Chehalis, Hilary Butler within and for the county of King, Joseph Cushman in and for the county of Thurston, C. H. McAlmond in and for the county of Jefferson, R. B. Holbrook in and for the county of Island, William Pattel in and for the county of Whatcom.

Sec. 3. Every wreck master before entering upon the duties of his office, shall be sworn faithfully to discharge his duty, and shall give bond to the judge of probate, for the county in which he resides, with sufficient security to the acceptance of said judge, for the faithful discharge of his duty, and every person having a claim against any such wreck master, for any breach or neglect of his official duty, may have a remedy therefor by a suit on his bond to be prosecuted in the name of the judge of probate, in like manner as bonds given to judges of probate by administration of the estate of deceased persons.

SEC. 4. No ship, vessel, boat, nor any goods, wares and merchandise, that shall be cast by the sea upon the land, shall be deemed to belong to the territory as wrecked property, but may be recovered by the owner, consignee, or person having the charge thereof, at the time of the happening of the disaster by which the wreck was occasioned, upon the payment of a reasonable salvage and necessary expenses.

SEC. 5. The wreck master in each county to which the provisions of this act are applicable, in which any wrecked property shall be found, when no owner or other person entitled to the possession of said property shall appear, shall have power, and it shall be his duty, to pursue all necessary measures for saving and securing such property, to take possession thereof, in whose hands soever the same may be, in the name of the people of this territory, to cause the value thereof to be appraised by disinterested persons, and keep the same in some safe place, to answer the claims of such persons as may thereafter appear entitled thereto.

SEC. 6. If the property so saved shall be in a perishable state so as to render the sale thereof expedient, it shall be the duty of the wreck master to apply to some judge of the United States district court, or justice of the peace by a petition supported by an affidavit of the facts for an order authorizing such sale; and if the judge or justice of the peace, to whom such application shall be made, shall be satisfied that a sale of the property would be most beneficial to the parties most interested, it shall be the duty of the officer to whom the application is made to make the order so applied for.

SEC. 7. If such order be made, the officer having custody of the property directed to be sold, shall sell the same at public auction, at the time and in the manner that shall be specified in the order; and the proceeds of such sale, deducting the expense thereof, as the same shall be made by the officer making such order, shall be paid to the treasurer of the county.

SEC. 8. If within one year after such recorded property shall have been found and saved, any person shall claim the same or the proceeds thereof, as owner or consignee or the agent of the owner or consignee, and shall establish his claim by evidence, which any United States judge or justice of the peace shall deem to be satisfactory, it shall be the duty of such officer to make an order directing the wreck master in whose possession the property may be, to deliver the property if not sold as above, or to pay the proceeds arising from the sale thereof, if sold as aforesaid, to the claimant, upon the payment by him of a reasonable salvage, and all necessary expenses incurred in the preservation and keeping of said property.

SEC. 9. No order shall, however, be made, unless the claimant shall deliver to such officer a bond, with one or more sufficient securities, to be approved by said officer conditioned for the payment of all damages that may be recovered against such claimant or his representatives within two years after the sale of such bond by any person establishing his title as owner of the property or proceeds to be delivered, said bond shall be taken in the name of the United States of America, and the penalty shall be double the value of the property or proceeds before mentioned.

SEC. 10. The bond shall be filed in the office of the judge of the probate court for the county in which it shall be taken. If it shall be forfeited, the party injured by such forfeiture shall be entitled to recover, in the proper court, the full amount of the condition of said bond together with costs of suit.

SEC. 11. If the plaintiff prevail in such suit, there shall be deducted in addition to the salvage and expense charged on the property, from the damages to be recovered, all the costs of the defendant making his defense.

SEC. 12. It shall be the duty of every officer to whom any order, duly made for the delivery of wrecked property, on the payment of its proceeds shall be directed to present to the claimant exhibiting such order, a written statement of the claims for salvage and expenses on such property and proceeds. If the claimant shall refuse to allow such claims, the amount of such salvage and expenses shall be adjusted in the manner hereinafter provided, and in all cases, after the payment, on tender of the payment of such salvage and expenses as agreed to, or adjusted, the officer in whose custody such property or proceeds shall be, shall deliver or pay the same according to the order directed to him.

SEC. 13. It shall be the duty of the wreck masters in the several counties in which they shall be appointed, to give all possible aid and assistance to all vessels stranded on the coasts of their respective counties, and to the persons on board the same, and to use their utmost endeavors to save and preserve such vessels and their cargoes, and all goods and merchandise that may be cast by the sea upon the land, and in the performance of their duties, they shall employ such and so many men as they shall think proper.

SEC. 14. It shall be the duty of all magistrates, constables and citizens, to aid and assist the wreck masters when required in the discharge of their duties.

SEC. 15. All sheriffs, wreck masters, and all persons employed, and all other persons aiding and assisting in the recovery and preservation of wrecked property, shall be entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in the performance of such services, out of the property saved, and the officer having the custody of such property, shall detain the same until such salvage and expenses shall be paid.

SEC. 16. The whole salvage that shall be claimed in any case, shall not exceed one half of the value of the property or proceeds on which such salvage shall be charged ; and every agreement, order or adjustment, allowing a greater salvage, shall be void.

SEC. 17. If in any case the amount of salvage and expenses on property saved, shall not be settled by agreement of the parties, the owner or consignee of such property, or the master or supercargo having charge thereof, at the time the same was wrecked, or a claimant having an order for its delivery, may apply to any justice of the peace for the county in which such property shall be, for the appointment of suitable persons as appraisers, to adjust and settle the amount of such salvage and expenses.

SEC. 18. It shall be the duty of such justice of the peace, to whom such application shall be made, by an order under his hand and seal, to appoint three disinterested freeholders of the county to adjust and settle such salvage and expenses.

SEC. 19. The persons so appointed before they enter on the performance of their duties, shall be sworn to perform faithfully and impartially the duties of their trust, before any officer authorized to administer oaths. They shall have power to issue compulsory process for the attendance of witnesses, who shall attend or be produced, and their decision or that of any two of them under their hands, as to the amount of salvage and expenses that ought to be paid, and the sums to be paid to each person entitled to share in such salvage, or claiming such expenses, shall be final and conclusive.

SEC. 20. The fees and expenses of the appraisers shall be paid by the person upon whose application they shall have been appointed, and shall be a charge on the property saved ; each appraiser shall be entitled to three dollars for each day's attendance, and to a sum not exceeding two dollars for his daily expenses.

SEC. 21. Every wreck master into whose possesssion any wrecked property shall come, shall immediately thereafter publish a notice directed to all parties, for at least four weeks in succession, in one or more of the newspapers printed in this territory.

SEC. 22. Every such notice shall contain a minute description of the wrecked property, and of every bale, bag, box, cask, piece or parcel thereof, and of the marks, brands, letters and figures on each ; and shall state where such wrecked property then is, and its actual condition, and the name if known, of the vessel from which it was taken or cast on shore, and of the master and supercargo of such vessel, and the place where such vessel then is and its actual condition; and the expenses of publishing every such note, shall be charged on the property or proceeds to which such notice shall relate.

SEC. 23. Every wreck master, or other officer who shall detain in his hands any wrecked property, or the proceeds thereof, after the salvage and expenses chargeable thereon shall have been agreed to or adjusted, and the amount thereof shall have been paid or tendered to him, or who shall be guilty of any fraud, embezzlement or extortion, in the discharge of his duties, or who shall in any manner, violate the provisions of this act, shall forfeit treble damages to the party injured, and shall be deemed guilty of a misdemeanor.

SEC. 24. Every person who shall take away goods from any stranded vessels or goods cast by the sea upon the land, or found in any bay or creek, or who shall knowingly have in his possession any goods so taken or found, and shall not notify the same to the wreck master of the county where the same shall have been found, within forty-eight hours after the same shall have been taken by him, or have come into his possession, shall forfeit treble the value of the goods so taken or kept by him, to the owner or consignee thereof, and shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment or both, in the discretion of the court by which he shall be tried.

SEC. 25. Every person who shall deface or obliterate the marks on wrecked property, or in any manner disguise the appearance with intent to prevent the owner from discovering its identity, and every person who shall destroy or suppress any invoice, bill of lading, or other document tending to show the ownership of wrecked property, shall be deemed guilty of a misdemeanor punishable by fine or imprisonment, the fine not to exceed two thousand dollars, the imprisonment three years.

SEC. 26. If within a year after wrecked property shall have been saved, no person shall have appeared to claim the same, or if within three months after a claim shall have been preferred, the salvage and expenses on such property shall not have been commenced, it shall be the duty of the wreck master to sell the same at public auction, and to pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this territory, for the benefit of the parties interested, but in no case shall any deduction of salvage and expenses be made, unless the amount thereof shall have been settled upon due proof, before some court of record of the county in which the property shall have been saved; a copy of which order, and the evidence in support thereof, shall be transmitted by the officer making it to the territorial treasurer.

SEC. 27. It shall be the duty of all judges, sheriffs, justices of the peace, coroners, constables, and wreck masters, to present all offences and offenders against the provisions of this act, that shall come to their knowledge within their respective counties, to the grand jury at the next term of the United States district court therein.

SEC. 28. Nothing in this act shall be so construed as to conflict with an act entitled "an act relative to scows, boats, skiffs, canoes, and other water craft."

SEC. 29. All wreck masters elected under this act, shall hold their office during the term of three years, and until their successors are elected and qualified.

AN ACT TO PROVIDE FOR THE APPOINTMENT OF NOTARIES PUBLIC.

SEC. 1. Governor may appoint biennially notaries for the several counties.
2. Duties of notary public.
3. In case of death &c., disposition of records.
4. Penalty if notary public on resignation or removal fail to deposit records within three months, &c.
5. Notaries public shall provide official seal.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* There shall be as many notaries public biennially appointed by the governor for the several counties as he shall deem expedient; and they shall be severally commissioned and engaged thereon, according to law.

SEC. 2. Notaries public are hereby authorized within their respective counties to act, transact, do and finish all matters and things relating to protests, and protesting bills of exchange and promissory notes, and all other matters within their office required by law; to take depositions as prescribed by law, and acknowledgments of deeds and other instruments, and to administer oaths.

SEC. 3. On the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the office of the clerk of the district court, for the county in which the said notary public resided.

SEC. 4. If any notary public on his resignation or removal from office, shall for the space of three months, neglect to deposit his records and official papers in the clerk's office, he shall forfeit a sum not exceeding five hundred dollars.

SEC. 5. Every notary public, before he enters upon the duties of his office, shall provide an official seal, and deposit an impression of the same (together with said oath and bond,) in the office of the secretary of the territory.

AN ACT TO PROVIDE AGAINST DANGEROUS AND VICIOUS CATTLE.

SEC. 1. Owners of dangerous cattle liable ; when.
2. Person killing such cattle not liable ; when.
3. When act to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That any person or persons who own or are owners of dangerous or vicious cattle, which animal or animals are known to endanger the safety of persons traveling through neighborhoods, by their dangerous and vicious disposition, such person or persons having twelve hours' notice of the dangerous disposition of such animal or animals, and shall neglect or refuse effectually to prevent such cattle from disturbing the peace and safety of the neighborhood where such animals may range, such owner or owners shall be liable to a fine of not less than five (5) dollars, nor more than fifty (50) dollars, which may be recovered before any justice of the peace of the county, with costs of suit, for the use of the school fund.

SEC. 2. That any person who should, in defence of himself or others, kill one or more such animals, he shall not be liable to any damage for any such act.

SEC. 3. This act to take effect and be in force from and after its passage.

AN ACT TO PROVIDE FOR THE PUBLIC PRINTING AND THE DISTRIBUTION OF THE LAWS AND JOURNALS.

SEC. 1. Territorial printer to be elected ; when.
His term of office.
Bond to be given.
2. Duties of the territorial printer.
3. Compensation.
4. Secretary to have the work examined.
Compensation to the person making examination.

SEC. 5. Secretary to make an index.
Compensation therefor.
6. Chief clerks to furnish copies of laws and journals.
Compensation therefor.
7. When this act to take effect.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington*, That there shall be elected annually by the legislative assembly, upon joint ballot, a territorial printer, who shall serve for one year from the date of his election, and until his successor shall be elected and qualified; and such printer shall, within ten days after his election, or before entering upon the duties of his office, enter into bond with sufficient security, to be approved by the secretary of the territory, with conditions for the prompt and workmanlike execution of the public printing, and faithful performance of all the duties required of him by law.

SEC. 2. It shall be the duty of the territorial printer, to execute all the incidental printing ordered by the legislative assembly during the sessions thereof, and he shall annually cause seven hundred copies of the laws, one hundred and fifty copies of the journal of the council, one hundred and fifty copies of the journal of the house of representatives to be printed and disposed of as follows: One copy of each to the members of the legislative assembly, their officers and clerks; one copy of each to the civil officers of this territory appointed by the United States; sixty copies of each to be placed in the territorial library, one copy of each to be deposited with the county auditor of each county, for the inspection of the public; the remaining portion to be distributed among the several counties.

SEC. 3. The prices to be paid to such printer are hereby established as follows: For composition, per thousand ems, two dollars and fifty cents; figure work, per thousand ems, three dollars; rule and figure work, per thousand ems, four dollars; press work, per token, common form, two dollars and fifty cents; folding reports and bills, per thousand copies on each signature, three dollars; stitching reports and bills, per hundred copies, one dollar and fifty cents; paper for the same, six dollars per ream; and for binding in strong paper or otherwise, a reasonable compensation shall be allowed, to be fixed by the secretary of the territory; and the secretary shall defray the expenses of the same out of any money in his hands appropriated by congress to pay the expenses of the legislation of this territory, and shall annually report to the legislature the amount of work done and the cost.

SEC. 4. It shall be the duty of the said secretary to procure the services of some practical printer to see that the work furnished by the territorial printer is executed in a workmanlike manner, and to measure and estimate the same, and to give a certificate under affidavit to said secretary to that effect; and the said practical printer shall receive, as a compensation for his services, the sum of five dollars per day for the time necessarily employed in said duty.

SEC. 5. It shall be the duty of said secretary to make a complete index of said laws and journals with marginal notes to the volumes of the general laws, and he shall receive for his services under this act, the sum of one thousand dollars to be paid out of any money appropriated by congress to defray the expenses of the legislature of this territory.

SEC. 6. Copies of said laws and journals shall be furnished the said territorial printer by the chief clerks of the two branches of the legislative assembly within twenty days after the adjournment, for which services they shall receive the sum of five dollars per day, to be paid out of any money appropriated by congress to defray the expenses of the legislature of this territory; the clerk of the house to furnish a copy of all the laws originating in the house, and the clerk of the council to furnish a copy of all laws originating in the council.

SEC. 7. This act to take effect from and after its passage.

Passed April 11, 1854.

AN ACT TO PROVIDE FOR PRINTING THE LAWS IN THE PIONEER AND DEMOCRAT.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That it shall be the duty of the territorial printer to publish the laws of the present session in the Pioneer and Democrat, by inserting each act once in said paper at as early a period as practicable.

SEC. 2. All laws published in said paper may be read in evidence from the paper in which it shall be contained, in all courts of justice in this territory, and in proceedings before any officer, body or board, until the first day of August 1854.

SEC. 3. This act to take effect from and after its passage.

AN ACT TO PROVIDE FOR THE APPOINTMENT OF COMMISSIONERS OF DEEDS.

SEC. 1. Governor may appoint commissioners of deeds.
Powers of.
2. Before entering upon duties, to make oath and file certificate of, in office of secretary.

SEC. 1. *Be it enacted by the Legislative Asssembly of the Territory of Washington,* That the governor may appoint in each of the United States and the territories thereof, one or more commissioners, under the seal of this territory, to continue in office during the pleasure of the governor, for the time being, who shall have power to administer oaths, and to take depositions and affidavits to be used in this territory; and also to take the acknowledgment of any deed or other instrument, to be used or recorded in this territory.

SEC. 2. Before any commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath before any justice of the peace, or other officer authorized to administer oaths in the state or territory for which such commissioner is appointed, that he will faithfully discharge all the duties of his office; a certificate of which shall be filed in the office of the secretary of the territory.

AN ACT TO DEFINE THE JUDICIAL DISTRICTS OF WASHINGTON TERRITORY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the session of the supreme court shall be holden at the seat of government, on the first Monday in December in each year.

SEC. 2. The territory is hereby divided into three judicial districts.

SEC. 3. The first district shall consist of the counties of Walla Walla, Skamania, Clarke, Cowlitz; Wahkiacum and Pacific.

SEC. 4. The second district shall consist of the counties of Lewis, Chehalis, Thurston and Sawamish.

SEC. 5. The third district shall consist of the counties of Pierce, King, Island, Clalm, Jefferson and Whatcom.

SEC. 6. Two terms of the district court shall be held in each county every year; except those counties attached to other counties for judicial purposes.

SEC. 7. The district courts in and for the county of Jefferson, shall be held on the first Monday in April and October; for the county of Island, on the second Monday in April and October; for the county of Whatcom, on the third Monday in April and October; for the county of King on the fourth Monday in April and October; for the county of Pierce on the first Monday in May and November.

SEC. 8. The district courts in and for the county of Thurston, shall be held on the second Monday in May and November; for the county of Sawamish, on the third Monday in May and November; for the county of Lewis, on the fourth Monday in May and November.

SEC. 9. The district courts in and for the county of Skamania, shall be held on the last Monday in March and September; for the county of Clarke, one week after the time appointed for Skamania; for the county of Cowlitz, on the second Tuesday after the time appointed for Clarke county; for the county of Pacific, one week after the time appointed for Cowlitz county.

SEC. 10. The county of Chehalis is hereby attached to the county of Thurston, for judicial purposes; and the county of Clalm, for like purposes, is attached to the county of Jefferson.

SEC. 11. This act to take effect from and after the first day of June, 1854.

AN ACT ASSIGNING THE DISTRICT JUDGES OF WASHINGTON TERRITORY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Hon. Edward Lander, chief justice, be and hereby is assigned to the third district and to reside therein; that Hon. Victor Monroe, one of the associate justices, be and hereby is assigned to the second district and to reside therein; that Hon. Obadiah B. McFadden, one of the associate justices, be and hereby is assigned to the first district and to reside therein.

SEC. 2. Either of said district judges may hold court in any district other than that for which he was assigned, in case of the absence, sickness or disability, of any one of the judges to hold the regular term or terms of court.

AN ACT TO APPORTION THE REPRESENTATION OF THE LEGISLATIVE ASSEMBLY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the apportionment of the members of the council shall be as follows:

Walla Walla, Skamania, and Clarke counties, shall elect two.
Cowlitz, Wahkiacum, Pacific, and Lewis, shall elect two.
Chehalis, Thurston, and Sawamish, shall elect two.
Pierce and King shall elect two.
Whatcom, Island, Jefferson, and Clalm, shall elect one.

The members of the house of representatives shall be as follows:

Walla Walla shall elect one—1.
Skamania shall elect one—1.
Clarke shall elect four—4.
Cowlitz shall elect one—1.
Lewis shall elect two—2.
Wahkiacum and Pacific shall elect one—1.
Chehalis and Sawamish shall elect one—1.
Thurston shall elect four—4.
Pierce shall elect three—3.
Pierce and King together, shall elect one—1.
King shall elect one—1.
Island and Whatcom shall elect one—1.
Jefferson and Clalm shall elect one—1 :—22.

AN ACT DEFINING THE TIME OF THE CONVENING OF THE LEGISLATURE.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the regular annual session of the legislature shall commence on the first Monday in December, in each year.

AN ACT TO PROVIDE FOR THE APPOINTMENT OF A BOARD OF COMMISSIONERS TO PREPARE A CODE OF LAWS FOR THE TERRITORY OF WASHINGTON.

SEC. 1. Board appointed.
2. Enter immediately upon preparation of necessary laws; report to standing committees of the house.
3. Commission remain in session until adjournment of legislature, unless sooner discharged.
4. Commission to appoint clerk; compensation.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Edward Lander, Victor Monroe and William Strong, be, and are hereby appointed a board of commissioners to prepare and report to the legislature from day to day, during its session, a code of laws for said territory.

2. That the said commissioners shall enter immediately upon the preparation of such laws as in their judgment are applicable to, and now necessary to preserve the public peace and well being of the inhabitants of this territory, and report to the several standing committees of the house and council such laws as they may prepare.

3. That the commissioners remain in session until the adjournment of the present legislature, unless sooner discharged by said legislature.

4. That said commission shall have power to appoint a clerk, if, in their opinion, it is necessary, and that they be allowed such compensation as the legislature may deem reasonable.

PRIVATE AND LOCAL LAWS.

LOCAL LAWS.

AN ACT TO INCORPORATE THE CITY OF STEILACOOM.

ARTICLE I.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the city of Steilacoom shall be bounded as follows: Commencing at the north east corner of Lafayette Balch's land claim, thence south along the line of said claim to the south east corner of the town plat of said town: thence westerly along the line of said town plat to the east line of John M. Chapman's portion of said town: thence south along said line to the south east corner of said town plat: thence west along the line of said town plat to the bay, (or Puget Sound:) thence northerly, the meanderings of the bay, (or Puget Sound,) to Sand Point, known as "Chapman's Point:" thence easterly, the meanderings of the bay, (or Puget Sound,) to the place of beginning.

SEC. 2. The inhabitants of the said city of Steilacoom shall be, and they are hereby constituted a body politic and corporate by the name of "The City of Steilacoom," and by that name they and their successors shall be known in law, and have perpetual succession, sue and be sued, plead and be impleaded, in all courts of law whatsoever, and receive property, personal and real, within said city for public buildings, public works and city improvements, and may dispose of the same in any way for the benefit of the city. May purchase property beyond the limits of the city to be used for burial purposes, and for the establishment of a hospital for the reception of persons affected with contagious or other diseases, also for water works to supply the city with water, and may dispose of the same for the benefit of said city. And they shall have a seal which they may alter at pleasure.

ARTICLE II.

GOVERNMENT OF THE CITY.

SEC. 1. For the government of the city, there shall be elected in the manner hereinafter provided, the following officers: A common council, (consisting of seven members,) a mayor, recorder, a treasurer, a marshal, an assessor, who shall hold their offices for one year, and until their successors shall be duly elected and qualified, and there shall be appointed annually, by the city council, a city attorney, a street commissioner, a city surveyor, a city collector, a harbor master, and a port-warden.

ARTICLE III.

SEC. 1. That a general election for all city officers of the corporation required to be elected under this act, shall be held on the first Monday in November of each year.

SEC. 2. No person shall be entitled to vote at any city election who shall not be an elector for territorial officers, and have resided in this city ten days next preceding the day of election, and no person shall be eligible to any office under this charter who is not a qualified voter of said city.

SEC. 3. At all elections for city officers, the vote shall be by ballot at the time and place designated by the city council.

SEC. 4. That all vacancies happening before the annual election, shall be filled by the city council.

SEC. 5. That all elections for city officers shall continue for one day, during which time the polls shall be kept open from ten o'clock A. M., to four o'clock P. M.

SEC. 6. The persons who shall have received a plurality of votes for any office, shall be declared duly elected, and the clerk shall issue to him a certificate of election; upon presentation of the same by him to the council he shall be sworn into office.

ARTICLE IV.

SEC. 1. The members of the common council shall fix the time and place of holding their stated meetings, and may be convened by the mayor at any time. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

SEC. 2. Any ordinance which shall have been passed by the common council, shall, before it becomes a law, be presented to the mayor for his approval; if he approves, he shall sign it; if not, he shall, within ten days, return it with his objections in writing to the common council, who shall cause the same to be entered in their journal, and shall proceed to reconsider the same. If, after such reconsideration, two thirds of the members of the common council shall agree to pass the same, it shall become a law.

SEC. 4. The mayor and common council shall have power within the city:—

1. To make by-laws and ordinances not repugnant to the laws of the United States or to the laws of this territory, necessary to carry into effect the provisions of this chapter.

2. To levy taxes not to exceed one-half of one per centum per annum upon all real and personal property made taxable by law for territorial and county purposes.

3. To make regulations to prevent the introduction of contagious diseases into the city, and for securing health, peace, cleanliness and good order of the city.

4. To prevent and restrain any disturbance or disorderly conduct, or any indecent and immoral practices within the limits of said city.

ARTICLE V.

SEC. 1. The mayor and members of the common council shall receive no pay for their services, until the city shall contain three thousand inhabitants, and then such pay to be determined by a vote of the city.

SEC. 2. The recorder shall receive the same fees for his services as justices of the peace are entitled to by law for services of a similar nature.

SEC. 3. The marshal shall receive the same fees for his services as constables are entitled to by law for services of a similar nature, and for other services such compensation as may be provided by ordinance.

SEC. 4. All other officers provided for by this act, or to be created, shall receive such compensation as may be established by ordinance.

ARTICLE VI.

OF THE DUTIES OF OFFICERS.

SEC. 1. It shall be the duty of the mayor to communicate to the common council at least once in each year of the condition of the city, its finances and improvements.

SEC. 2. The recorder shall reside within the limits of the city.

SEC. 3. It shall be the duty of the city marshal, in addition to the duties prescribed by the common council, to execute and return all processes issued by the recorder.

SEC. 4. It shall be the duty of the assessor, in addition to the duties prescribed by the common council, to make out, within such time as the common council shall order, a correct list of all the property taxable by law within said city.

SEC. 5. It shall be the duty of the collector to issue all license granted by the city authority, to collect all moneys and tax, and pay the same over to the treasurer monthly.

SEC. 6. It shall be the duty of the city treasurer to receive all moneys that shall come to said city by taxation or otherwise, and pay out the same as provided by this act.

SEC. 7. It shall be the duty of the city attorney to attend to all suits, matters and things in which the city may be legally interested, give his advice and opinion in writing upon each matter when required by the mayor or common council, and attend to all prosecutions against offenders of the city ordinances.

SEC. 8. The common council shall define the duties of all officers by ordinance, which are not herein prescribed.

ARTICLE VII.

SEC. 1. All officers required to be elected under this act, shall, before entering upon the duties of their office, take an oath or affirmation before any person competent to administer oaths.

SEC. 2. All resolutions and ordinances calling for the appropriating of any sums of money exceeding one hundred dollars, ($100,00) shall lie over at least two meetings.

SEC. 3. This act to take effect whenever the citizens of Steilacoom shall have elected the officers provided for in this act, and shall have fully organized under the same.

AN ACT TO INCORPORATE THE COWLITZ STEAMBOAT COMPANY.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That Seth Catlin, John R. Jackson, Fred. A. Clark, Henry N. Piers, G. B. Roberts, together with all other persons who shall become associated with them, by subscribing to the capital stock of said company, and their successors, be, and they are hereby, constituted and declared a body corporate and politic, by the name and style of the "Cowlitz river steamboat company," for the purpose of improving the bed of the Cowlitz river for navigation, and keeping on said river a steamboat or steamboats, for the transportation of freight and passengers, from some point near the head of tide-water, on said river, to Clarke's hotel, or some other point on Cowlitz river, to be determined by said company, or a majority of the directors of said company, and from said Clarke's hotel, or whatever other point may be fixed upon by said directors, to said tide-water on said Cowlitz river; and said company is hereby authorized and empowered to have and to receive, purchase and possess, enjoy and retain land, lots, tenements, goods, chattels, rents and effects of any kind, and to any amount necessary to carry into effect the objects of said corporation, and the same to use, alien, sell, and dispose of at pleasure; to sue and to be sued, in any court having competent jurisdiction; to have and to use a common seal, the same to alter, break, and renew at pleasure; to ordain and establish such rules, regulations, and by-laws as may be necessary for the well-being of said corporation, subject, however, to the constitution of the United States, the laws of this territory, and the restrictions and limitations contained in this act.

Sec. 2. The capital stock of said company shall consist of ten thousand dollars, divided into shares of one hundred dollars each, and shall be transferable in entire shares, or parts of shares, as the regulations of the corporation may prescribe: *Provided, however,* That no stockholder shall be at liberty to transfer his stock without the consent of the directors, after an installment is ordered, until such stockholder shall have paid the amount due his stock.

Sec. 3. The persons named in the first section of this act, or a majority of them, shall do and perform all acts necessary to organize said company; shall be commissioners to receive subscriptions, and shall have power to cause books to be opened at any time, or in any place, they may think proper, to receive subscriptions to the capital stock of said company.

Sec. 4. That when one thousand shares shall have been subscribed, the commissioner shall call a meeting of the subscribers, by causing notice of the time and place thereof to be posted up in at least three different places of Lewis county, and published in the nearest newspaper, not less than twenty days preceding the time of said meeting; and at such time and place, those present shall proceed to elect directors, who shall serve for one year from their election, and until their successors are chosen and qualified; and they shall adopt such regulations and by-laws for the government of the corporation, as by them may be deemed expedient; the stockholders to vote either in person or by proxy, each stockholder being entitled to one vote for each share.

Sec. 5. The affairs of said company shall be governed by three directors, or a majority of them, who shall be elected by the stockholders on the first Monday in June, each year, and shall hold their office until their successors are elected and qualified; and each director shall be a stockholder at the time of his election, and shall cease to be a director when he shall cease to be a stockholder; all vacancies which may happen in said board of directors shall be filled by a new election, to be held as prescribed in the previous section.

SEC. 6. The directors, before entering upon their duties, shall take oath or affirmation, faithfully and impartially to discharge their duties.—They shall choose a president and treasurer from among their number.—They shall appoint such officers and agents as they may think proper to promote said undertaking; to make contracts, and do all things necessary to carry them into effect, and allow them such compensation as they may think just. They shall determine on the amount of bonds they may see fit to exact from their officers or agents, and pass upon their sufficiencies; prescribe the amount of instalment to be paid upon subscriptions, the manner of securing payment of such subscriptions, and take the general charge and supervision of the affairs of said company.

SEC. 7. Said directors shall have power to annually establish and fix the rates of freight and passage on said Cowlitz river: *Provided, however*, The rates by them established shall in no case exceed the following, to wit:

Fifteen dollars per ton.

From said point at tide-water, or other point, to Clarke's, each passenger, four dollars.

And the freight and passage to any intermediate point between tide-water and Clarke's hotel, other than those specified above, shall be in the same proportion: *Provided, however*, That in any case where the convenience of the passenger or passengers may require the steamboat to stop at any point, other than its usual place for taking in freight and passengers, then a bargain fare may be charged: *Provided, however*, That in no case said fare shall exceed the fare for the entire distance.

SEC. 8. If said company shall not be organized within six months after the passage of this act, and shall not, within six months afterwards, have a steamboat in full operation on said river, then this act shall cease and be null and void.

SEC. 9. That said company may, at any time, contract debts and liabilities to the amount of stock actually subscribed by responsible stockholders, and payable within twelve months from the time of contracting said debts and liabilities: *Provided*, That in any case of default or failure to pay the debts or liabilities contracted by the company, each and every stockholder in the company shall be individually liable for the payment of such debt or liability, equally and ratably, to the full amount of his stock in the same.

SEC. 10. Said company shall be subject to the provisions of any law that now is, or may hereafter be enacted, regulating the mode of taxation;

and the capital stock of said company shall be subject to such tax as may now, or hereafter, be provided by law.

SEC. 11. And the said company is hereby granted six years the exclusive right and privilege of navigating the said Cowlitz river, with freight and passage steamboats: *Provided, however*, That said company shall, to the utmost of their power, and as far as may be necessary and practicable, improve the channel of said river for navigation, and at any time when it is believed by the legislature that said company are in the way of, and hinder other and better improvements in said river, the legislature may repeal this charter, allowing any other company to pay to said company, at the appraised value, for all the improvements in the channel of said river, that are deemed to be of value to the navigation of said river.

SEC. 12. This act shall not be so construed as to prohibit the transportation of goods and passengers in any other mode than in steamboats, and shall have no application where the tide ebbs and flows.

SEC. 13. This act shall take effect and be in force from and after its passage.

AN ACT TO INCORPORATE OLYMPIA LODGE NO. FIVE, OF FREE AND ACCEPTED MASONS.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington*, That Thornton F. McElroy, C. G. Saylor, B. F. Shaw, M. T. Simmons, B. F. Yantis, J. W. Wiley, Ira Ward, C. H. Hale, N. Delin, J. P. Anderson, Smith Hays, F. A. Clarke, I. B. Powers, Edmund Sylvester, Philip Waterman, and G. A. Lathrop, worshipful masters, wardens, and members of the masonic fraternity, their associates and successors, be, and they are hereby, constituted and declared to be a body corporate and politic, in deed, fact, and name, by the name and style of "Olympia lodge, No. 5, of free and accepted masons," and by that name they, and their successors shall be able and capable, in law, to sue and be sued, plead and be impleaded, defend and be defended against, in all the courts of law and equity in this territory, to take, receive, and hold all moneys, and other property, by voluntary subscriptions, contributions, donations, or otherwise; also, all legacies and devises of real and personal estate; and to have, hold, possess, and acquire lands and tenements, furniture, chattels, regalia, and property of any description, incident to such bodies, to an amount not exceeding twenty thousand dollars, and the estate aforesaid to lease, grant, convey, and dispose of, in such manner as they may judge expedient, at their will and pleasure; and, at any of their meetings for business, to enact and pass such rules, regulations, and by-laws for the government of said lodge, and management of the affairs thereof, as they may deem proper and necessary: *Provided,* The same be not repugnant to the laws of this territory, and of the United States.

Sec. 2. That said lodge may hold its meetings at such times and places, and may elect such officers as they may think proper, for the management and government of its affairs.

Sec. 3. This act shall take effect and be in force from and after its passage.

AN ACT FOR THE RELIEF OF JOHN S. CLENDENIN.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the territorial treasurer be, and he is hereby, authorized and directed to pay to John S. Clendenin, out of any money in the treasury not otherwise appropriated, the sum of two hundred and fifty dollars, for services rendered as prosecuting attorney for the territory, at the recent term of the district courts for the several counties of this territory.

AN ACT FOR THE RELIEF OF A. BENTON MOSES.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That A. Benton Moses, late acting sheriff of the county of Thurston, be authorized to receive from the county treasurer of the said county, and the county treasurer be authorized to pay to the said A. Benton Moses, the sum of one hundred and thirty-three dollars and thirty-three cents, for the said services as sheriff of the county of Thurston.

AN ACT TO PROVIDE FOR THE PAYMENT OF THE CODE COMMISSIONERS.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the code commissioners, appointed by house bill No. one, be allowed the sum of ten dollars per day, for the time they have been employed.

SEC. 2. The clerks employed by said commissioners shall be entitled to seven dollars per day.

SEC. 3. It shall be the duty of the secretary of the territory, to pay the said commissioners and clerks the sums due them respectively, upon the certificate of the speaker of the house of representatives, and president of the council.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM STEILACOOM, IN PIERCE COUNTY, TO SEATTLE, IN KING COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Hugh Patterson, C. D. Boron, and E. A. Clark be, and they are hereby, constituted a board of commissioners to locate a territorial road from Steilacoom to Seattle.

SEC. 2. Said commissioners, or a majority of them, shall meet at Steilacoom on the first day of May next, or as soon thereafter as they may deem practicable, and after being duly sworn faithfully and impartially to perform their duties as such commissioners, shall proceed to locate said road on the nearest and most practicable route.

SEC. 3. Said commissioners shall cause a true report to be made and deposited with the clerks of the county commissioners' court in Pierce and King counties, who shall file and preserve the same; and when said report is so deposited with said clerks, said road shall be considered as a territorial road to all intents and purposes, and shall be opened and kept in repair in the same manner as other territorial roads are opened and kept in repair.

SEC. 4. Said commissioners shall be entitled to receive the sum of three dollars per day, for the time necessarily employed in locating the same, to be paid out of the treasuries of Pierce and King counties, in proportion to the time employed in each county; and they shall also be allowed all necessary assistants, who shall be entitled to a reasonable compensation for their services.

SEC. 5. This act to take effect and be in force from and after its passage.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM STEILACOOM TO THE COUNTY SEAT OF CLARKE COUNTY.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That William N. Savage, Joseph G. Glover, and A. J. Bolon are hereby constituted a board of commissioners, to locate a territorial road from Steilacoom to the county seat of Clarke county, by way of the county seat of Lewis county.

SEC. 2. Said commissioners, or a majority of them, shall meet at Steilacoom on the first Monday in June next, or as soon thereafter as circumstances will permit, and after being duly sworn, faithfully and impartially to perform their duties as such commissioners, shall proceed to locate said road on the nearest and most practicable route.

SEC. 3. Said commissioners shall cause a true report to be made, and a certified copy of the same to be deposited with the clerk of the board of county commissioners of Pierce, Thurston, Lewis, and Clarke counties, who shall file and preserve the same; and when said report is so deposited with said clerks as aforesaid, said road shall be considered as a territorial road to all intents and purposes, and shall be opened and kept in repair in the same manner as other territorial roads are opened and kept in repair.

SEC. 4. Said commissioners shall each be entitled to receive as a compensation for his services three dollars per day, for the time necessarily employed in locating the same, to be paid out of the county treasuries of Pierce, Thurston, Lewis, and Clarke counties, in proportion to the time employed in each county through which said road passes, and shall be allowed to employ such assistants as they may deem necessary, who shall receive a reasonable compensation for their services.

SEC. 5. This act to take effect from and after its passage.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM SEATTLE, IN KING COUNTY, TO BELLINGHAM BAY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Clement W. Sumner, L. M. Collins, and Henry Webber be, and are hereby, constituted a board of commissioners to locate a territorial road from Seattle to Bellingham Bay.

SEC. 2. Said commissioners, or a majority of them, shall meet at Seattle, on the first day of July next, or as soon thereafter as they may deem practicable, and after being duly sworn, faithfully and impartially to perform their duties as such commissioners, shall proceed to locate said road on the nearest and most practicable route.

SEC. 3. Said commissioners shall cause a true report to be made, and a certified copy of the same to be deposited with the clerks of the several county commissioners' courts through which the road passes, who shall file and preserve the same; and when said report is so deposited with said clerks, said road shall be considered as a territorial road to all intents and purposes, and shall be opened and kept in repair in the same manner as other territorial roads are opened and kept in repair.

SEC. 4. Said commissioners shall be entitled to receive the sum of three dollars per day, for the time necessarily employed in locating the same, to be paid out of the treasuries of the different counties through which said road passes, in proportion to the time employed in each county; and they shall also be allowed to employ any necessary assistants, who shall be allowed a reasonable compensation for their services.

SEC. 5. This act to take effect from and after its passage.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM OLYMPIA TO SHOALWATER BAY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Logan Hays, B. F. Yantis, and John Vail, are hereby constituted a board of commissioners to locate a territorial road from Olympia to Shoalwater bay.

SEC. 2. Said commissioners, or a majority of them, shall meet at Olympia, on the first Monday of July next, or as soon thereafter as circumstances will permit, and after being duly sworn, faithfully and impartially to perform their duties as commissioners, shall proceed to locate said road, on the nearest and most practicable route.

SEC. 3. Said commissioners shall cause a true report to be made, and a certified copy of the same to be deposited with the clerk of the board of county commissioners of Thurston and Chehalis counties, who shall file and preserve the same; and when said report is so deposited with said clerks, as aforesaid, said road shall be considered as a territorial road, to all intents and purposes, and shall be opened and kept in repair in the same manner as other territorial roads are opened and kept in repair.

SEC. 4. Said commissioners shall each be entitled to receive as a compensation for his services three dollars per day, for the time necessarily employed in locating the same, to be paid out of the county treasuries of Thurston and Chehalis counties, in proportion to the time employed in each county through which said road passes, and shall be allowed to employ such assistants as they may deem necessary, who shall receive a reasonable compensation for their services.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM CATHLAMET TO THE HOUSE OF SIDNEY S. FORD, IN THURSTON COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That L. H. Davis, Justin Nye, and James Birnie, jr., be and hereby are, constituted a board of commissioners to locate a territorial road from Cathlamet, on the Columbia river, to the house of Sidney S. Ford, on the Chehalis river, in Thurston county.

SEC. 2. Said commissioners, or a majority of them, shall meet at Cathlamet, on the first Monday in May next, or as soon thereafter as circumstances will permit, and after being duly sworn, faithfully to discharge their duties, shall, within six months thereafter, proceed to locate said road by the nearest and most practicable route.

SEC. 3. Said commissioners shall cause a true report to be made, and a certified copy of the same to be deposited with the county auditor in every county through which said road shall pass. Said report shall contain an account of the expenses proportioned to each county, and when said report is deposited and filed with said auditors, as aforesaid, said road shall be considered as a territorial road to all intents and purposes, and shall be opened and kept in repair in the same manner as other territorial roads are opened and kept in repair.

SEC. 4. Said commissioners shall each be entitled to receive as a compensation for his services three dollars per day, for the time necessarily employed in locating the same, to be paid out of the county treasuries of the counties through which said road shall pass, in proportion to the time employed in each county through which said road passes, and shall be allowed to employ such assistants as they may deem necessary, who shall receive a reasonable compensation for their services, to be paid in like manner with the commissioners.

SEC. 5. If said commissioners, or any one or more of them, shall resign, they shall, before such resignation, have the power to appoint some suitable person to act in their stead, who shall qualify in like manner, and in all respects possess the same powers, and perform the same duties, as those originally appointed.

SEC. 6. This act to take effect from and after its passage.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM SHOAL WATER BAY TO GRAY'S HARBOR, AND THENCE TO INTERSECT A ROAD FROM OLYMPIA TO SHOALWATER BAY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That D. K. Weldan, James H. Roundtree, and Daniel Kiser, be, and are hereby constituted a board of commissioners to locate a territorial road from Shoalwater Bay to Gray's Harbor; thence to intersect a road from Olympia to Shoalwater Bay, on the most practicable and nearest route. Said commissioners or a majority of them, shall meet at the house of D. K. Weldan in Shoalwater Bay, on the fifteenth day of July next, or as soon thereafter as may be, and after being duly sworn, shall proceed to locate said road as aforesaid. Said commissioners shall make a true report of the route, sign and certify the same, and shall attach to said report the bill of expenses as provided by this bill, and shall deposit a certified copy of said report with the clerk of the county of Chehalis, who shall file and preserve the same, and when said report is so received and filed, said route shall be considered a territorial road to all intents and purposes, and be opened and kept in repair as other roads are opened and kept in repair. Said commissioners shall each receive three dollars per day, as full compensation for their services for the time necessarily employed in locating said road, and shall be allowed to employ such assistants as they may deem necessary, who shall be allowed a reasonable conpensation for their services, and the expenses of locating said road to be paid out of the county treasury of Chehalis county.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM OLYMPIA, ON PUGET SOUND, TO THE MOUTH OF THE COLUMBIA RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Alonzo B. Dellabaugh, Sidney S. Ford, and Nelson

Barnes, be and hereby are constituted a board of commissioners to locate a territorial road from Olympia, on Puget Sound, to some point at the mouth of the Columbia river, between Todd's Bay and Cape Disappointment.

Sec. 2. Said commissioners, or a majority of them, shall meet at Olympia, on the second Monday in June next, or as soon thereafter as circumstances will permit, and after being duly sworn to faithfully perform their duties as said commissioners, shall proceed to locate said road on the nearest and most practicable route.

Sec. 3. Said commissioners shall cause a true report to be made, and a certified copy of the same to be deposited with the clerk of the board of county commissioners, in every county through which said road shall pass. Said report shall contain an account of the expenses proportioned to each county, and when said report is deposited and filed with said clerks, as aforesaid, said road shall be considered as a territorial road to all intents and purposes, and shall be opened and kept in repair in the same manner as other territorial roads are opened and kept in repair.

Sec. 4. Said commissioners shall each be entitled to receive as a compensation for his services, three dollars per day for the time necessarily employed in locating the same, to be paid out of the county treasuries of the counties through which said road shall pass, in proportion to the time employed in each county through which said road passes, and shall be allowed to employ such assistants as they may deem necessary, who shall receive a reasonable compensation for their services, to be paid in like manner with the commissioners.

Sec. 5. If said commissioners, or any one or more of them, shall resign, they shall, before such resignation, have the power to appoint some suitable person to act in their stead, who shall qualify in like manner, and in all respects possess the same powers, and perform the same duties as those originally appointed.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM SEATTLE ON PUGET SOUND, TO THE EMIGRANT TRAIL.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That Thomas Mercer, H. H. Tobbin, and Henry Vanassal, be and they are hereby appointed commissioners to locate and mark a territorial road commencing at Seattle, thence running in an easterly direction *via* Duwamish mills, thence to where the emigrant trail crosses White river.

SEC. 2. The said commissioners or a majority of them shall meet in Seattle on the first Monday in May next, for the purpose of proceeding to the discharge of their duties as commissioners aforesaid, and that they be and are hereby authorized to adjourn from time to time, and from place to place as they may agree and determine, and in case said commissioners from any cause shall fail to meet at the time and place aforesaid, or any other time or place to which the said commissioners may have adjourned, the sheriff of King county shall, on the application of either of the commissioners, notify in writing the other commissioners of some other day to be by him appointed, and require their attendance on such day at the place aforesaid, and the commissioners when assembled shall proceed to view and mark said road.

SEC. 3. That the said commissioners, after having performed the services required by this act, shall make a full and complete report to the county commissioners of King county within ten days after the completion of the survey.

SEC. 4. Said commissioners shall receive the sum of three dollars per day for their services, and shall be allowed to employ such assistance as they may deem necessary, who shall receive a reasonable compensation for their services to be paid out of the county treasury of King county.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM OLYMPIA, ON PUGET SOUND, TO THE TOWN OF MONTICELLO, NEAR THE MOUTH OF THE COWLITZ RIVER.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Gilmore Hays, J. C. Davis and M. T. Simmons of Thurston county, be and they are hereby appointed commissioners to locate and mark a territorial road commencing at Olympia, in Thurston county, on Puget Sound, thence on the nearest and most practicable route to the town of Monticello, near the mouth of the Cowlitz river, to be ascertained by the said commissioners.

SEC. 2. That the commissioners, or a majority of them, shall meet at Olympia on the second Monday in April next, for the purpose of proceeding to the discharge of their duties as commissioners aforesaid, and that they be and are hereby authorized to adjourn from time to time, and from place to place as they may agree and determine, and that in case said commissioners from any cause, shall fail to meet at the time and place aforesaid, or any other time or place to which the said commissioners may have adjourned, the sheriff of the county shall, on the application of either of the said commissioners, notify in writing the other members of the board of some other day to be by him appointed, and require their attendance on such a day at the place aforesaid, and the commissioners, when assembled, shall proceed to view and mark said road.

SEC. 3. The said commissioners, after having performed the services required by this act, shall make a full and complete report to the county commissioners of the several counties through which the said road may pass, within ten days after the completion of the survey.

SEC. 4. That each county, through which the road shall pass, shall pay in proportion to the number of miles within its limits, and each commissioner shall receive three dollars per day, while in actual service.

AN ACT AMENDATORY TO AN ACT ENTITLED AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM OLYMPIA ON PUGET SOUND, TO THE TOWN OF MONTICELLO, NEAR THE MOUTH OF THE COWLITZ RIVER, PASSED THE HOUSE OF REPRESENTATIVES MARCH 21, 1854.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That so much of the above act which appoints M. T. Simmons of Thurston county, one of said commissioners, be, and is hereby repealed, and that F. Kennedy of Thurston county, be, and is hereby appointed one of said commissioners, instead of M. T. Simmons.

AN ACT TO ESTABLISH AND DEFINE THE SOUTH-EASTERN BOUNDARY OF JEFFERSON COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the south-eastern boundary of the county of Jefferson in said territory, shall be as follows: commencing at the Admiralty Inlet at a point where the eastern boundary line of King county runs through Pilot Cove; thence from said point in a westerly and strait line to the extreme upper point of Hood's canal; thence down said canal to the northern boundary line of Sawamish county; thence westerly along said line of Sawamish county to the Pacific coast, and all that portion of King county included in the above described boundaries shall be included in Jefferson county.

AN ACT TO DEFINE THE EASTERN BOUNDARY OF PACIFIC COUNTY.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the eastern boundary of Pacific county commence at a point in the channel of the Columbia river due south of a mountain known as Jim Crow; thence due north, over the summit of said mountain to the southern boundary of Chehalis county.

Sec. 2. This act to take effect, and be in force from and after its passage.

AN ACT TO CREATE COWLITZ COUNTY, AND DEFINE ITS BOUNDARIES.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all the territory in the following described boundaries shall form a new county, to be called Cowlitz county, viz: Beginning at the south-east corner of Pacific county, on the Columbia river, thence up said river to the south bank of the Kalama; thence east to the first range line east of the meridian; thence north, along said line to the east fork of the Cowlitz River; thence westerly following the said east fork of said river to the point where it intersects with the west fork; thence due west to the dividing ridge dividing the waters of Chehalis and Columbia rivers; thence along said ridge to the western line of Pacific county; thence to the place of beginning, on the line of Pacific county at the Columbia river.

AN ACT TO CREATE AND ORGANIZE THE COUNTY OF CLALAM.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all that portion of Jefferson county embraced within the following boundaries, to wit: commencing on the south side of the Straits of Juan de Fuca, at a point in line as near as may be between Port Townsend and Port Discovery, so as to divide the peninsula between said places as near equally as possible; thence due south to the summit of the Olympic range of mountains; thence following said range northwesterly to to the sea coast; thence following up the sea coast northerly to Cape Flattery, and to the Straits of Juan de Fuca; thence easterly, along the coast to the place of beginning, is hereby constituted and organized into a separate county, to be known and called Clalam county.

AN ACT TO CREATE THE COUNTY OF CHEHALIS.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all that portion of Thurston county embraced within the following named boundaries, to wit: commencing at the north-west corner of Pacific county, on Shoalwater Bay; thence due east to a point due south of a point on the Chehalis river six miles above Armstrong's Mills; thence north to the line of Sawamish county, thence west along said line of Sawamish county to the Pacific ocean; thence south along the coast of Pacific Ocean and Shoalwater Bay, to the place of beginning, be and the same is hereby constituted and organized into a separate county, to be known and called Chehalis county.

SEC. 2. That all the territory embraced within said boundaries shall compose a county for civil and military purposes, and shall be under the same laws, rules, regulations and restrictions as all other counties in the territory of Washington, and entitled to elect the same officers as other counties are entitled to elect.

AN ACT TO CREATE AND ORGANIZE THE COUNTY OF WALLAWALLA.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That all that portion of Skamania county, within the following described boundaries, to wit: commencing at a point opposite the mouth of Deschutes river on the north bank of Columbia river, thence running north to forty-ninth parallel, thence along said parallel to summit of Rocky Mountains; thence south along summit of Rocky Mountains to forty-sixth degree of parallel; thence west along said forty-sixth parallel to where it crosses the Columbia river; thence along said Columbia river to place of beginning, be, and the same is hereby constituted and organized into a separate county, to be known and called Walla-walla county.

Sec. 2. That all the territory embraced within said boundaries shall compose a county for civil and military purposes, and shall be under the same laws, rules, restrictions and regulations as all other counties in this territory, and entitled to elect the same county officers as other counties are entitled to elect.

Sec. 3. The said county shall be attached to Skamania county for judicial purposes.

AN ACT TO CREATE AND ORGANIZE THE COUNTY OF SKAMANIA.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all that portion of Clarke county lying east of Cape Horn, be and the same is hereby organized into a county, with all the powers, rights and privileges of other counties in the territory; and that it shall be bounded as follows: commencing at a point due north of a rock on the south bank of Columbia river, called Rooster Rock, running thence north to the parallel of 46 deg. 30 minutes north latitude, thence along said parallel east to Rocky mountains; thence along base of Rocky mountains to south east corner of the territory of Washington; thence down along the line of Oregon and Washington territory to place of beginning.

Sec. 2. Said county shall be called Skamania.

AN ACT TO DEFINE THE NORTHERN BOUNDARY OF CLARKE COUNTY.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the northern line of the county of Clarke be, and the same is hereby defined as fellows: Commencing on Columbia river, on the south bank of Kalama, at its mouth, running due east six miles east of meridian line; thence due north to second standard parallel; thence due east to the western line of Skamania county.

AN ACT TO CREATE AND ORGANIZE THE COUNTY OF WAHKIACUM.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all that portion of Washington territory contained within the following boundaries, namely: beginning at a point in the southern boundary line between said territory and Oregon territory due south from the south-west corner of the claim of Alexander S. Abernethy, and running thence due north to the southern line of Lewis county; thence westerly along said line to the eastern boundary line of Pacific county; thence south to the southern boundary line of Washington territory, and thence easterly along said southern boundary line to the place of beginning, be organized into a county, to be known and called Wahkiacum county, and possess all the powers, rights and privileges of other counties in this territory.

SEC. 2. For judicial purposes in all cases within the jurisdiction of the district court, said county shall remain attached to Cowlitz county; and the sheriff of Cowlitz county shall serve all process issuing out of the district court, in the same manner as if this county had not been organized.

SEC. 3. The county seat of said county is hereby located at Cathlamet.

AN ACT TO CREATE AND ORGANIZE THE COUNTY OF SAWAMISH.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all that portion of Thurston county embraced within the following boundaries, to wit: commencing in the middle of the main channel of Puget Sound, opposite the mouth of Case's Inlet; thence westerly along the main channel to the point of land between Eld's Inlet and Totten's Inlet; thence westerly, following the dividing ridge between said inlet to the summit of the Coast Range of mountains; thence due west to the Pacific coast; thence northerly along said coast thirty miles; thence due east to the middle of the main channel of Hood's Canal; thence along the middle of said channel to Wilke's Portage; thence easterly to the head of Case's Inlet; thence down the middle of the main channel to the place of beginning, is hereby constituted and organized into a separate county, to be known and called Sawamish county.

AN ACT TO CREATE AND ORGANIZE WHATCOM COUNTY.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That all that portion of Island county embraced within the following described boundaries, to wit: Commencing at the north point of Perry's Island, running due east to the summit of the Cascade mountains, thence north along the summit of the Cascade mountains to the boundary line of the United States; thence west along the boundary line to the Canal de Arrow, through the middle of the Canal de Arrow to the Straits of Juan de Fuca; thence through the Straits to the mouth of Ringgold's channel; thence across the mouth of Ringgolds channel to the place of beginning, be and the same is hereby constituted and organized into a separate county, to be known and called Whatcom county.

SEC. 2. That the territory embraced within said boundaries shall compose a county for civil and military purposes, and shall be under the same laws, rules, regulations and restrictions as all other counties in the territory of Washington, and entitled to elect the same officers as other counties are entitled to elect.

SEC. 3. This act to take effect from and after its passage.

AN ACT TO LOCATE THE COUNTY SEAT OF CLARKE COUNTY.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington*, That the county seat of Clarke county be, and the same is hereby, located and established at Columbia city, on the east portion of Mrs. Ester Short's land claim.

SEC. 2. *And be it further enacted,* That until such time as the county of Clarke shall furnish suitable buildings for the holding of courts, upon the place mentioned in first section of this act, all the courts required or permitted by law to be held within said county, may be held at the dwelling house belonging to said Mrs. Ester Short.

Passed March 15, 1854.

AN ACT TO LOCATE THE COUNTY SEAT OF WALLA-WALLA.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county seat of the county of Walla-walla be, and the same is hereby, located on the land claim of Lloyd Brooks.

AN ACT TO ESTABLISH THE COUNTY SEAT OF CHEHALIS COUNTY.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county seat of Chehalis county be, and the same is hereby, temporarily established at the house of D. K. Welden, in said county.

Sec. 2. This act shall take effect from and after its passage.

AN ACT TO TEMPORARILY LOCATE THE COUNTY SEAT OF COWLITZ COUNTY.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the temporary county seat of Cowlitz county shall be at the town of Monticello.

AN ACT TO PERMANENTLY LOCATE THE COUNTY SEAT OF PACIFIC COUNTY, BY A VOTE OF THE CITIZENS OF SAID COUNTY.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be legal for the county commissioners of said county to order, as soon as they may deem necessary, an election, (and if no one place receive a majority of all the votes cast,) elections, for the purpose of locating the county seat of said county, which said election or elections shall be conducted in such manner, and be held at such time and place, as may by them be ordered.

SEC. 2. When any one place shall have received a majority of all the votes cast, it shall be the duty of said county commissioners to prepare suitable buildings in which to hold the terms of the United States district court for said county, as soon as may be practicable.

AN ACT TO LOCATE THE COUNTY SEAT OF SKAMANIA COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the county seat of Skamania county be, and the same is hereby, located on the south-east corner of the land claim of F. A. Chenoweth.

AN ACT TO APPOINT OFFICERS FOR THE COUNTY OF CLARKE.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Wash ington,* That William Dillon, C. C. Stiles and Capt. — Fairchilds, be, and the same are hereby constituted and appointed a board of county commissioners, and that George W. Hart be, and is hereby appointed sheriff, and that W. M. Ryan, be and is hereby appointed auditor, and that Henry Burlingame be and is hereby appointed treasurer, and that Solomon Strong be and is hereby appointed justice of the peace.

SEC. 2. That the persons hereby constituted and appointed officers by the first section of this act, shall, before entering upon the discharge of their respective duties, qualify in the same manner, and with like restrictions, as those elected at an annual or general election.

AN ACT TO APPOINT A CORONER, ASSESSOR, AND CONSTABLES FOR THE COUNTY OF CLARKE.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That W. M. Simmons be, and is hereby appointed coroner; and that Henry C. Morse be, and is hereby appointed assessor; and that Moses Kirchner be, and is hereby appointed constable in and for the precinct of Vancouver; and that Christopher C. Bozarth be, and is hereby appointed constable in and for the precinct of Cathlapoodle; and that Benj. Potter be, and is hereby appointed constable in and for the precinct of Washoogle, all in and for the county of Clarke, who shall continue and discharge the duties of their respective offices until the next annual election for county officers, and until their successors are duly elected and qualified.

SEC. 2. That the persons hereby appointed officers by the first section of this act, shall, before entering upon the discharge of their respective duties, qualify in the same manner, and with like restrictions as those elected at an annual or general election.

SEC. 3. This act to take effect from and after its passage.

AN ACT TO APPOINT A JUDGE OF PROBATE AND A JUSTICE OF THE PEACE FOR THE COUNTY OF CLARKE.

SEC. 1. *Be it enacted by the legislative assembly of the territory of Washington,* That Henry Gulliffer be, and is hereby appointed judge of probate for the county of Clarke, and that Michael Tubbs be, and is hereby appointed justice of the peace for the precinct of Vancouver, in said county; they shall continue to hold and discharge the duties of their respective offices until the next annual or general election for county officers, and until their successors are duly elected and qualified.

SEC. 2. That the persons hereby appointed judge of probate and justice of the peace in the first section of this act, shall, before entering upon the discharge of their respective duties, qualify in the same manner, and with like restrictions, as those elected at an annual or general election. *Provided,* nothing in this act shall be so construed as to disqualify the present justices of the peace from acting or holding their office until the first general election for county and precinct officers.

SEC. 3. This act to take effect from and after its passage.

AN ACT APPOINTING OFFICERS FOR THE COUNTY OF SKAMANIA.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That S. M. Hamilton, Joseph Robbins, Jacob W. Scroder, be, and they are hereby constituted and appointed the board of commissioners; and that E. F. McNoll be, and is hereby appointed sheriff; and that Cornelius Palmer be, and is hereby appointed judge of probate; and that I. H. Bush be, and is hereby appointed treasurer; and that George W. Johnson be, and is hereby appointed auditor; and that N. H. Gates and B. B. Bishop be, and are hereby appointed justices of the peace for the county of Skamania, all of whom shall continue to hold and discharge the duties of their respective offices until the next annual or general election for county officers, and until their successors are duly elected and qualified.

SEC. 2. That the persons hereby constituted and appointed officers, by the first section of this act, shall, before entering upon the discharge of their respective duties, qualify in the same manner, and with like restrictions as those elected at an annual or general election; *Provided*, nothing in this act shall be so construed as to disqualify the present justices of the peace from acting or holding their office until the first general election.

AN ACT TO APPOINT A JUSTICE OF THE PEACE FOR THE COUNTY OF SKAMANIA.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Lloyd Brooke be, and is hereby appointed a justice of the peace for the county of Skamania, to hold his office until his successor for the precinct in which he now lives, shall be elected and qualified.

Sec. 2. The said Lloyd Brooke shall, before entering upon the duties of justice of the peace, qualify in like manner as other justices of the peace elected at an annual or general election, and shall have full power to appoint a constable to serve all process authorized by law, until a constable shall be elected in and for the precinct in which he resides.

AN ACT TO APPOINT OFFICERS FOR WALLA-WALLA COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That George C. Bomford, Jno. Owens and Dominie Pamburn, be, and they are hereby constituted and appointed the board of county commissioners; and that Narcies Raymo be, and is hereby appointed sheriff; and that Lloyd Brooke be, and is hereby appointed judge of probate, and shall have jurisdiction as justice of the peace, all in and for the county of Walla-walla.

Sec. 2. And be it further enacted, That the county commissioners appointed in the first section of this act, shall have power to fill all offices not provided for in the first section of this act.

Sec. 3. That the persons hereby constituted officers by the first section of this act shall, before entering upon the discharge of their duties, qualify in the same manner and with like restrictions, as those elected at an annual or general election.

AN ACT TO APPOINT OFFICERS FOR COWLITZ COUNTY.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Nathaniel Stone is hereby appointed a justice of the peace for Monticello precinct in Cowlitz county; and R. C. Smith is hereby appointed constable for said precinct, and Nathaniel Ostrander is hereby appointed judge of probate for Cowlitz county, and Thomas Roe, Alexander S. Abernathy and Taylor Rue are hereby appointed county commissioners, and Charles Holman is hereby appointed county auditor, and that Alexander Crawford be and is hereby appointed treasurer; and that James Huntington be, and is hereby appointed sheriff, and that Benjamin Huntington be and is hereby appointed assessor; and that W. H. Harris be, and is hereby appointed a justice of the peace in and for Oak Point precinct; and that F. A. Smith be and is hereby appointed constable in and for the same preciuct; said officers shall be required to qualify in the same manner as the like officers are required to qualify who are elected at the regular election.

AN ACT TO APPOINT OFFICERS FOR THE COUNTY OF WAHKIACUM.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That James Birnie, Thompson Dray and Austin Nye, be, and the same are hereby appointed county commissioners; that Newel

Bearss be, and is hereby appointed auditor; that James Birnie jr., be, and is hereby appointed treasurer; that William Stilwell be, and is hereby appointed sheriff; and that Solomon Stilwell be and is hereby appointed probate judge and justice of the peace, within and for the county of Wahkiacum.

SEC. 2. Said persons, before entering upon their duties, shall qualify in the same manner as is provided in case of officers elected, and shall continue to discharge the duties of said offices until their successors are elected and qualified.

AN ACT APPOINTING OFFICERS FOR PACIFIC COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That George T. Eastabrook, P. S. McGowen, Daniel Wilson be, and they hereby are appointed a board of county commissioners; and that George P. Newel be, and hereby is appointed judge of probate, and that Ezra Weston be, and hereby is appointed a justice of the peace, and that William Edwards be, and hereby is appointed constable for said county of Pacific, who shall continue to hold and discharge the duties of their respective offices until the next general or annual election for county officers, and until their successors are duly elected and qualified.

SEC. 2. That the persons appointed officers by the first section of this act, shall, before entering upon their respective duties, qualify in the same manner, and with the like restrictions as those elected at an annual or general election.

AN ACT TO APPOINT OFFICERS FOR LEWIS COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Henry R. Stilman is hereby appointed a county commissioner, and that James Gardner is hereby appointed judge of probate, and that Horace H. Pinto is hereby appointed auditor, and that Charles F. White, O. Small and Henry M. Sterns are hereby appointed justices of the peace, and that Baptice Pane and William C. Marry are hereby appointed constables in and for Lewis county, who shall continue to hold and discharge the duties of their respective offices until the next annual election for county officers, and until their successors are duly elected and qualified.

Sec. 2. That the persons hereby constituted and appointed officers by the first section of this act, shall, before entering upon the duties of their respective offices, qualify in the same manner, and with like restrictions as those elected at an annual or general election.

Sec. 3. This act to take effect and be in force from and after its passage.

AN ACT APPOINTING OFFICERS TO FILL VACANCIES IN LEWIS COUNTY.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Thomas Metcalf and J. C. Davis, be, and they are hereby appointed county commissioners; that J. L. Mitchell be, and is hereby appointed sheriff; that Martin Budon be, and is hereby appointed assessor; that C. C. Pagett be, and is hereby appointed treasurer; that G. B. Roberts be, and is hereby appointed coroner; that A. B. Dellenbaugh be, and is hereby appointed county superintendent of schools; that F. Donlu be, and is hereby appointed justice of the peace, all in and for the county of Lewis.

Sec. 2. That all of the officers appointed in the foregoing section shall, before entering upon the duties of their respective offices, qualify in like manner as officers elected at an annual or general election, and shall hold their offices until the next annual or general election, and until their successors are elected and qualified.

AN ACT APPOINTING OFFICERS FOR CHEHALIS COUNTY.

Sec. I. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Geo. Watkins, John Vail, and John Brady, be, and they are hereby appointed a board of county commissioners, and that A. O. Houston be, and is hereby appointed county auditor, and that D. K. Welden be, and is hereby appointed county treasurer, and that James H. Roundtree be, and is hereby appointed probate judge, and that W. A.

Fairfield be, and is hereby appointed sheriff, and that W. M. Bullard, C. L. W. Russell, and Isaiah L. Scammond, be, and they are hereby appointed justices of the peace in and for the county of Chehalis, who shall continue to hold and discharge the duties of their respective offices until the next general or annual election, and until their successors are duly elected and qualified.

SEC. 2. That the persons hereby appointed officers by the first section of this act shall, before entering upon the discharge of their respective duties, qualify in the same manner and with the like restrictions, as those elected at an annual or general election.

AN ACT APPOINTING OFFICERS FOR THURSTON COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Sydney S. Ford, senior, David J. Chambers, and James McAlister, be, and they are hereby appointed county commissioners, and that Urban E Hicks be, and is hereby appointed county auditor, and that Franklin Kennedy be, and is hereby appointed sheriff, and that Whitfield Kirtley be, and is hereby appointed assessor, and that Stephen D. Ruddell be, and is hereby appointed probate judge, and that Daniel R. Bigelow be, and is hereby appointed county treasurer, and that William W. Plumb, Nathan Eaton, and Joseph Broshears be, and they are hereby appointed justices of the peace in and for the county of Thurston, who shall continue to hold and discharge the duties of their respective offices, and until their successors are duly elected and qualified.

SEC. 2. That the persons hereby appointed officers by the first section of this act, shall before entering upon the discharge of their respective duties, qualify in the same manner and with the like restrictions, as those elected at an annual or general election.

SEC. 3. This act to take effect and be in force from and after its passage.

AN ACT TO APPOINT A SUPERINTENDENT OF COMMON SCHOOLS FOR THURSTON COUNTY, AND A CONSTABLE FOR OLYMPIA PRECINCT.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Elwood Evans be, and is hereby appointed superintendent of common schools within and for the county of Thurston, and Franklin Kennedy is hereby appointed constable for the precinct of Olympia, within said county. Said officers to qualify in the same manner as if elected at the regular annual election, and to hold their offices until the next annual election.

AN ACT APPOINTING OFFICERS FOR SAWAMISH COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Wesley Gosnell, Charles Graham, and Lee Hancock, be, and they are hereby constituted and appointed a board of county commissioners, and that Finis K. Simmons be, and is hereby constituted and appointed sheriff, and that V. P. Morrow be, and is hereby constituted and appointed county auditor, and that Orington Cushman be, and is hereby constituted and appointed county treasurer, and that Alfred Hall be, and is hereby constituted and appointed judge of probate, and that Aaron M. Collins be, and is hereby constituted and appointed justice of the peace in and for the county of Sawamish, who shall continue to hold and discharge the duties of their respective offices until the next general or annual election for county officers, and until their successors are duly elected and qualified.

SEC. 2. That the persons hereby constituted and appointed officers by the first section of this act, shall, before entering upon their respective duties, qualify in the same manner and with the like restrictions as those elected at an annual or general election.

SEC. 3. That the seat of justice for the county of Sawamish, be temporarily established at the house of H. A. Goldsborough.

AN ACT APPOINTING OFFICERS FOR THE COUNTY OF PIERCE.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That William P. Dougherty, L. A. Smith, and William N. Savage, be, and are hereby appointed county commissioners, H. C. Perkins be, and is hereby appointed treasurer, Casper Dunham be, and is hereby appointed sheriff, Hugh Patterson be, and is hereby appointed assessor, Authony Laughlin be, and is hereby appointed coroner, M. H. Frost, Samuel McCaw, and Geo. Brown, be, and are hereby appointed justices of the peace, G. C. Bowlin be, and is hereby appointed auditor, H. C. Mosely be, and is hereby appointed probate judge, Wm. McLucas, Wm. Sherwood, be, and are hereby appointed constables, all of whom shall continue to hold and discharge the duties of their respective offices until the next annual or general election, and until their successors are duly elected and qualified.

Sec. 2. That the persons hereby constituted and appointed officers by the first section of this act, shall, before entering upon the discharge of their duties, qualify in the same manner and with like restrictions, as those elected at any annual or general election.

AN ACT TO APPOINT OFFICERS FOR KING COUNTY.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That Wm. A. Strickler be, and he is hereby constituted and appointed judge of the probate court, in and for the county of King, and that Thomas Mercer, G. W. W. Loomis, and L. M. Collins be, and they are hereby, appointed county commissioners, and that C. D. Boren be, and is hereby appointed sheriff, and that H. L. Yesler be, and is hereby, appointed county auditor, and that Wm. P. Smith be, and hereby is, appointed treasurer, and that Henry A. Smith be, and is hereby, appointed superintendent of schools, and that John C. Holgate be, and is hereby, appointed assessor, and that John A. Chase, S. L. Grow, and S. W. Russel be, and are hereby appointed justices of the peace, and that B. L. Johns, S. B Simons, and James N. Roberts be, and they are hereby, appointed constables, who shall continue to hold and discharge the duties of their respective offices, until the next annual election, and until their successors are duly elected and qualified.

Sec. 2. The persons herein appointed and constituted officers shall, before entering upon the discharge of their respective duties, qualify in the same manner, and with like restrictions, as those elected at the annual or general election.

AN ACT TO APPOINT OFFICERS FOR THE COUNTY OF JEFFERSON.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That J. P. Keller, F. W. Pettygrove, and D. F. Brownfield be appointed county commissioners, and A. A. Plummer be appointed county auditor, and J. K. Thorndike be, and is appointed county treasurer, J. B. Brown be appointed assessor, that Charles Bradshaw be appointed sheriff, that G. W. Garrish, William Webster, W. T. Sayward, and J. P. Keller be, and are hereby appointed justices of the peace, in their respective precincts, and F. W. Pettygrove be appointed judge of probate.

SEC. 2. The officers appointed under the foregoing section, shall take the usual oath of office, and give bonds as required by law, and shall hold their offices and discharge the duties thereof, until their successors are duly elected and qualified.

SEC. 3. This act to take effect and be in force from and after its passage.

AN ACT TO APPOINT OFFICERS FOR JEFFERSON COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That J. P. Keller, Wm. Dunn, and P. W. Pettygrove be, and they are hereby, constituted and appointed the board of county commissioners, and that J. K. Thorndike be appointed treasurer, W. T. Sayward be, and is hereby, appointed sheriff, L. B. Hastings be, and is hereby, appointed judge of probate, that A. A. Plummer be, and is hereby, appointed auditor, J. P. Keller, Wm. Webster, F. W. Pettygrove, and J. K. Thorndike be, and are hereby, appointed justices of the peace, and —— Klinger be, and is hereby, appointed assessor of said county, all of whom shall continue to hold their respective offices, and discharge the duties thereof, until the new general election for county officers, and until their successors are duly elected and qualified.

SEC. 2. That the persons hereby constituted and appointed officers by the first section of this act, shall, before entering upon the discharge of their respective duties, qualify in the same manner, and with like restrictions, as those elected at an annual or general election: *Provided,* That so much of the act entitled, "an act appointing officers for Jefferson county," heretofore passed by the legislature, as is inconsistent with the first section of this act, be, and is hereby repealed.

AN ACT TO APPOINT OFFICERS FOR CLALAM COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That E. H. McAlmond, E. Price, and Daniel F. Brownfield be, and are hereby, appointed county commissioners in and for the county of Clalm, and that Charles Bradshaw be appointed sheriff, and G. H. Gerrish be appointed justice of the peace, that J. C. Brown be appointed assessor, that ——— Fitzgerald be appointed treasurer, that John Margrave be appointed probate judge, that G. B. Moore be appointed county auditor.

SEC. 2. Before entering on their duties, the above officers shall qualify in every respect as required by law.

SEC. 3. This act to be in force and take effect from and after its passage.

AN ACT APPOINTING OFFICERS FOR ISLAND COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That R. H. Lansdale be, and is hereby, appointed county auditor, and that John Alexander, John Crocket, and I. J. Powers be, and are hereby appointed county commissioners, and that Hugh Crocket be, and is hereby appointed sheriff, and that Humphrey Hill be, and is hereby appointed assessor, in and for the county of Island, who shall continue to hold and discharge the duties of their respective offices, and until their successors are elected and qualified.

SEC. 2. That the persons hereby appointed officers by the first section of this act, shall, before entering upon the discharge of their respective duties, qualify in the same manner, and with the like restrictions, as those elected at an annual or general election.

SEC. 3. This act to take effect from and after its passage.

AN ACT TO APPOINT OFFICERS FOR WHATCOM COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That William Cullen, H. C. Page, and R. V. Peabody be, and the same are, hereby, appointed the board of county commissioners, and that Ellis Barnes be, and is, appointed sheriff, and that A. M. Poe be, and is hereby, appointed county auditor, in and for the county of Whatcom, who shall continue and discharge the duties of their respective offices until the next annual election for county officers, and until their successors are duly elected and qualified.

SEC. 2. That the persons hereby constituted officers by the first section of this act, shall, before entering upon the discharge of their respective duties, qualify in the same manner, and with like restrictions, as those elected at an annual or general election.

SEC. 3. This act to take effect and be in force from and after its passage.

AN ACT TO DEFINE THE PLACE OF HOLDING THE UNITED STATES DISTRICT COURT FOR PACIFIC COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the terms of the United States district court within and for the county of Pacific, shall be held at Chinook, until changed by the legislative assembly of this territory.

AN ACT TO AUTHORIZE A SPECIAL ELECTION IN PACIFIC COUNTY.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall be an election held in the county of Pacific for the election of one member of the legislature, to serve in the house of representative at the present session, on the eigth day of April, 1854; and that the same judges and clerks that served at the late special election, be, and are hereby appointed to serve at the ensuing election, with the same power to fill vacancies and make returns ; and the same election precincts at which votes were given at said special election, are hereby established, and the same forms shall be used as far as may be applicable, provided no election shall be void for want of any form in the absence of fraud.

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